conduct was criminal or permissible, would only have to seek out whether the objective facts of the enactment process had occurred. The legislature did not intend that persons would be put to the additional process of determining whether the *enactment* was valid.

(3) In other instances where so-called "tie-bar" language has been used, the legislature has been very explicit in expressing its intention that the other bill must not merely be "enacted" but must also take effect (i.e., must be "valid"); see 1951 PA 51, § 23, MCLA 247.673; MSA 9.1097(23), which provided that the act of which it was a part would become law only if another bill was "enacted into law and becomes effective". I would assume that the legislature would consistently follow its own precedent and would have made an explicit reference to the other bill's "taking effect" where that event (or where the declaration of the other bill's validity) was intended to be a condition precedent to the earlier law's becoming either operative or inoperative.

I am therefore of the opinion that House Bill No. 5250 was enacted into law before September 1, 1975 as provided in Michigan Election Law § 928a(3), as added by 1975 PA 121, and therefore:

(1) Sections 901, 902, 903, 904, 905, 906, 907, 908, 909, 911, 916, 918, 919 and 920 of the Michigan election law were never repealed;

(2) Sections 901a 902a, 902b, 903a, 904a, 905a, 906a, 907a, 908a, 908b, 910a, 919a, 921, 922, 923, 924, 925, 926, 928 and 929, purportedly added to the Michigan election law by Act 272, did not take effect on September 1, 1975, and will never have any effect.

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FRANK J. KELLEY,
Attorney General.

COLLECTION PRACTICES ACT: Purchase of claim.

A bona fide purchaser of a claim is not a "collection agency" within the meaning of the Collection Practices Act. Nevertheless, a purchaser of a claim may not engage in a collection practice prohibited by 1974 PA 361, §§ 18 and 19.

Opinion No. 4954 April 15, 1976.

Ms. Donna Duckworth
Deputy Administrator
Collection Agency Division
1116 South Washington Avenue
Lansing, Michigan 48926

You have asked the following question:

"I hereby request your opinion on the applicability of the Collection Practices Act to a business which buys 'claims' owed to a retail

firm and thereafter collects the 'claim' in its own name. Under such an arrangement the retail firm receives all consideration which it will ever receive at the time the 'claims' are purchased. As a result no pretended purchase or assignment of a 'claim' is involved."

The Collection Practices Act, 1974 PA 361, § 4(1); MCLA 445.214; MSA 19.655(24), provides as follows:

> "Except as hereinafter provided, a person shall not operate a collection agency or engage in the business of a collection agency without first applying for and obtaining a license from the director."

As indicated in OAG, 1975-1976, No. 4887, p . . . (September 26, 1975), only agencies involved in the solicitation or collection of "claims," as that term is defined by 1974 PA 361, *supra,* § 2(f), need be licensed as a collection agency pursuant to said act.

1974 PA 361, § 2(b), *supra,* defines "collection agency" as follows:

> "As used in this act:
>
> "* * *
>
> "(b) 'Collection agency' means a person directly or indirectly engaged in soliciting a claim for collection or collecting or attempting to collect a claim owed or due or asserted to be owed or due another. It includes a person who furnishes or attempts to furnish forms or a written demand service represented to be a collection technique, device, or system to be used to collect claims, if the form contains the name of a person other than the creditor in a manner indicating that a request or demand for payment is being made by a person other than the creditor even though the form directs the debtor to make payments directly to the creditor rather than to the other person whose name appears on the form. It includes a person who uses a fictitious name, or a name other than his own, in the collection of claims to convey to the debtor that a third person is collecting or has been employed to collect the claim."

Thus, not only must an agency be engaged in the solicitation or collection of a "claim," the claim must be owed or due or asserted to be owed or due to another. As a result, if a business enterprise makes a bona fide purchase of claims and thereafter attempts to collect those claims in its own name, the activity would not fall within the definition of a "collection agency." It may be noted that a purchaser of a claim may not use the purchase as a device to circumvent the Collection Practices Act by virtue of 1974 PA 361, *supra,* § 22, which provides:

> "This act applies to a person who, by any device, subterfuge, or pretense, makes a pretended purchase or takes a pretended assignment of accounts from another person to evade the provisions of this act."

Although an agency need not obtain licensure, it may nonetheless be required to comply with 1974 PA 361, *supra,* §§ 18 and 19, which set forth proscriptions that are not limited to "collection agencies." The pref-

atory language in both sections includes: "A person shall not . . ." The word "person" is defined by 1974 PA 361, § 2(a), *supra,* as follows:

"As used in this act:

"(a) 'Person' means an individual, partnership, association, corporation, voluntary association, trust, or other legal entity."

In contrast to the definition of "collection agency," the definition of "person" is all encompassing. Consequently, it includes agencies which make bona fide purchases of claims and thereafter attempt to collect those claims in their own names.

In summary, a business which makes bona fide purchases of claims and thereafter attempts to collect those claims in its own name need not obtain licensure pursuant to the Collection Practices Act, *supra.* However, such an agency may not engage in the following activities prohibited by 1974 PA 361, §§ 18 and 19, *supra*:

"Sec. 18. A person shall not:

"(a) Communicate with a debtor in a misleading or deceptive manner, such as using the stationery of an attorney or credit bureau unless it is a credit bureau and it is disclosed that it is the collection department thereof, using forms or instruments which simulate the appearance of judicial process using seals or printed forms of a government agency or instrumentality, or using forms that may otherwise induce the belief that they have judicial or official sanction.

"(b) Make an inaccurate, misleading, untrue, deceptive statement or claim in a communication to collect a debt or in any way conceal or not reveal the purpose of a communication when it is made in connection with collecting a debt.

"(c) Misrepresent in a communication with a debtor the legal status of a legal action being taken or threatened, or the legal rights of the creditor or debtor.

"(d) Communicate with a debtor without accurately disclosing the caller's identity or cause expenses to the debtor for long distance phone calls, telegrams, or other charges.

"(e) Communicate with a debtor, except through billing procedure when the debtor is actively represented by an attorney, the attorney's name and address are known, and the attorney has been contacted in writing by the credit grantor or his representative or agent, unless the attorney representing the debtor fails to answer written communication or fails to discuss the claim on its merits within 30 days.

"(f) Communicate information relating to a debtor's indebtedness to an employer or his agent unless specifically authorized in writing by the debtor subsequent to the forwarding of the claim for collection or in response to an inquiry initiated by the debtor's employer or his agent.

"(g) Employ a person required to be licensed under this act to collect a claim unless that person is a licensed collection agency.

"Sec. 19. In addition to the requirements of section 18 a person shall not:

"(a) Use or employ, in connection with collection of a claim, a person acting as a peace or law enforcement officer or any other officer authorized to serve legal papers.

"(b) Use or threaten to use physical violence in connection with collection of a claim.

"(c) Publish, cause to be published, or threaten to publish lists of debtors, except for credit reporting purposes, when in response to a specific inquiry from a prospective credit grantor on a debtor, or use shame cards, shame automobiles, or otherwise to bring public notice that the consumer is a debtor, except with respect to legal proceedings which are instituted.

"(d) Use any method to harass, oppress, or abuse a person or use profane or obscene language.

"(e) Use a method contrary to postal laws or regulations to collect accounts.

"(f) Fail to implement procedures designed to prevent violations by employees."

FRANK J. KELLEY,
Attorney General.

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RETIREMENT SYSTEMS: State employees

Members who have either acquired 25 years of service or have left state service and elected to come under the deferred retirement plan may elect retirement Option A.

The State Employees' Retirement Board does not have the power to establish a maximum time limit for the repayment of refunded contributions to restore forfeited service credit.

The State Employees' Retirement Board has discretionary authority to raise the rate of regular interest charged on the repayment of refunded contributions above the interest rate paid on refunds of employee contributions.

The annual leave and longevity pay earned during the employee's 5 years of highest compensation should be used to compute his or her "final average compensation."

Periods of absence without pay, for which no service credit was earned, should not be included within the "5 consecutive years" used in the computation of final average compensation.

As of the effective date of 1955 PA 237, benefits due under the State Employees' Retirement Act may be offset by workmen's compensation benefits only as provided in MCLA 38.23; MSA 3.981(23), dealing with duty disability benefits, and MCLA 38.27(e); MSA 3.981(27)(e), dealing with death benefits.