

"It shall be unlawful to establish or maintain any county office in connection with the county treasurer's office in any county in this State." MCLA 48.121; MSA 5.721

"The boards of supervisors of each county in this State shall provide a separate and distinct office for the county treasurer of their respective county." MCLA 48.122; MSA 5.722

Finally, provision is made for the conduct of the office of county treasurer in RS 1846, Ch 14, MCLA 48.35 *et seq*; MSA 5.681 *et seq*. Section 40 thereof defines the duties of such officer:

"It shall be the duty of the county treasurer to receive all moneys belonging to the county, from whatever source they may be derived; and all moneys received by him for the use of the county, shall be paid by him only on the order of the board of supervisors, signed by their clerk, and countersigned by their chairman, except when special provision for the payment thereof is, or shall be otherwise made by law." MCLA 48.40; MSA 5.686

And, although the county treasurer has authority to appoint a deputy county treasurer pursuant to § 37 of RS 1846, Ch 14, such a deputy would be equally bound by such legislation as it applies to the county treasurer himself.

It is therefore my opinion that a county public hospital comptroller may not be appointed a deputy county treasurer nor may such comptroller be custodian of the hospital's cash or investments.

FRANK J. KELLEY,
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CIVIL RIGHTS: Fair Housing Act

FAIR HOUSING ACT: Age

LANDLORD AND TENANT: Fair Housing Act

The Fair Housing Act prohibits a landlord from refusing to rent or lease a unit to a tenant on the ground that the tenant has children who will occupy the premises.

Opinion No. 4953

April 21, 1976.

Honorable Donald E. Bishop
State Senator
The Capitol
Lansing, Michigan 48902

Honorable Louis K. Cramton
State Representative
The Capitol
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You have requested an opinion relative to 1968 PA 112, as amended by 1975 PA 183; MCLA 564.101 *et seq*; MSA 26.1300(101) *et seq*, which

prohibits discrimination with regard to real estate transaction *inter alia* on account of age. In essence, you have asked whether a landlord may refuse to rent to a prospective tenant with children.

1968 PA 112, *supra*, § 102 states, in pertinent part:

“Sec. 102. As used in this act:

“(a) “Age” means chronological age.

Section 201 defines unfair housing practices.

“Sec. 201. It is an unfair housing practice for an owner, real estate broker, or real estate salesman, or any other person as defined in this act:

“(a) Refuse to negotiate for a real estate transaction with a person because of race, color, religion, national origin, sex, marital status, age, or handicap.

“(b) To refuse to engage in a real estate transaction with a person because of race, color, religion, national origin, sex, marital status, age, or handicap.

“(c) *To discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith because of race, color, religion, national origin, sex, marital status, age, or handicap.*

“(d) To refuse to receive from, or to fail to transmit to, a person, a bona fide offer to engage in a real estate transaction because of race, color, religion, national origin, sex, marital status, age, or handicap.

“(e) To represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is available, or to fail to bring a property listing to a person’s attention, or to refuse to permit a person to inspect real property, under reasonable conditions, because of race, color, religion, national origin, sex, marital status, age, or handicap.

“(f) To publish or advertise, directly or indirectly, an intent to make a limitation, specification, or discrimination based on race, color, religion, national origin, sex, marital status, age, or handicap.

“(g) To use a form of application for a real estate transaction for the purpose of making a limitation, specification, or discrimination based on race, color, religion, national origin, sex, marital status, age, or handicap.

“(h) To make a record or inquiry in connection with a prospective real estate transaction which indicates race, color, religion, national origin, sex, marital status, age, or handicap, except information relative to the marital status of persons may be obtained when necessary for the preparation of a deed or other instrument of conveyance.

“(i) To offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith with respect to race, color, religion, national origin, sex, marital status, age, or handicap.”

It is manifest that minors in the care of a parent or guardian fall within the coverage of the Act. As indicated above, section 102(a) sets forth the definition of "age" simply as "chronological age." Had the Legislature intended to exclude minors, it could have so provided.

Finally, construing the statute as a whole, it may be noted that the provisions of 1968 PA 112, § 201 are qualified in 1968 PA 112, § 301 in the following terms:

"Sec. 301. Section 201 does not apply:

"(e) With respect to the age provision only, to the sale, rental, or lease of housing accommodations meeting the requirements of federal, state, or local housing programs for senior citizens, or accommodations otherwise intended, advertised, designed or operated, bona fide, for the purpose of providing housing accommodations for persons 50 years of age or older."

Thus, under the doctrine of *expressio unius est exclusio alterius*, it is clear that the provisions of 1968 PA 112, § 201 apply in all situations not expressly excluded by 1968 PA 112, § 301. It is therefore my opinion that minors are within the scope of protection of 1968 PA 112, § 201(c), *supra*.

It should also be noted, however, that under the provisions of 1968 PA 112, § 205, a refusal to engage in a real estate transaction is not unlawful where based upon the lack of legal capacity of a person to enter into a binding contract. I would also note that we know of no court decisions that prohibit a landlord from setting aside a portion of a building or a separate building in a complex of buildings for families with children if that action is taken in the interests of the comfort and convenience of all of his tenants.

FRANK J. KELLEY,
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COUNTY MEDICAL EXAMINERS: Autopsies

PROSECUTING ATTORNEYS: Autopsies

AUTOPSY: Performed outside the state

The role of a prosecuting attorney in the performance of an autopsy is limited to issuance of a written order to the county medical examiner to conduct an investigation. After issuance of the order by the prosecuting attorney, the county medical examiner, if he believes it to be required, assumes full control and responsibility for arranging for an autopsy.

A county medical examiner may direct that an autopsy be performed by another person even where the autopsy is to be performed outside the state, but the county medical examiner continues to be responsible for the duties imposed upon him by law.