choose lawfully or need lawfully to incarcerate or permit incarceration of any such prisoner, its duty to him remains constant and may not be subjected to delegation; whether or not others are concurrently accountable for breach of the same or a corresponding legal duty." (emphasis added)

Thus, the Department of Corrections may choose to permit incarceration of a prisoner in its custody at another location. It may also be noted that in *People of the State of Michigan* v *Dale Otto Remling*, Jackson Circuit Judge Charles J. Falahee ordered a subject defendant transferred to the Federal Bureau of Prisons to serve a Michigan sentence imposed upon him.

It follows that, if a prisoner may be incarcerated at a location outside the state pursuant to general powers granted to an agency, a county medical examiner may transfer a body for an autopsy out of state where 1953 PA 181, § 5, *supra*, authorizes the county medical examiner to "direct to be performed an autopsy."

Thus, it is my opinion that a county medical examiner does have the authority to order that an autopsy be performed at an out-of-state facility but he continues to be responsible for the duties imposed upon him by law.

FRANK J. KELLEY,
Attorney General.

760422.2

PUBLIC HEALTH, DEPARTMENT OF: Confidential records

RECORDS AND RECORDATION: Confidentiality

LEGISLATURE: Committee subpoena of confidential records

A department of state government is obligated to comply with a subpoena issued by a legislative committee provided that the investigation is in aid of a legislative purpose and the information subpoenaed is pertinent to the investigation.

The director of the Department of Public Health, after being served with a subpoena issued by a legislative committee, must provide the committee with confidential clinical data. However, the members of the legislative committee are under a duty to respect the rights of privacy of the participants in the clinical study.

Opinion No. 4998 April 22, 1976.

Maurice S. Reizen, M.D., Director
Department of Public Health
3500 North Logan Street
Lansing, Michigan 48914

You have requested advice in regard to providing, to a legislative committee, certain information gathered by the Department of Public Health in a study to determine whether ingestion of PBB contaminated foods had caused adverse effects on human health. Specifically, you state that a

committee investigating the actions of the Department of Public Health has subpoenaed the names, addresses and clinical data on citizen participants in a study conducted by the department.

In the course of submitting information to the department, each participant executed a release to the department which stated in pertinent part as follows:

> ". . . I understand that such tests will be kept confidential and will be used along with other data for medical statistical reports. No information in which I am identified will be released except that the results of these tests, as well as additional details regarding this study, will be available to me either through my physician or through the Michigan Department of Public Health."

The committee to which you refer was created by House Resolution 171 which notes in the preamble that the Department of Agriculture and other agencies have acted in response to the poisoning of livestock. The resolution then states as follows:

> "Resolved by the House of Representatives, That there is created a special committee of the House, to consist of 5 members of the House, to be appointed by the Speaker, to function during the 1975 and 1976 Regular Sessions of the Legislature, to investigate the extent and methods of these particular departments and agencies; and be it further
>
> "Resolved, That the committee may subpoena witnesses, administer oaths, and examine the books and records of any person, partnership, association, or corporation, public or private, involved in a matter properly before the committee; and may call upon the services and personnel of any agency of the state and its political subdivisions; and may engage such assistance as it deems necessary; . . ."

I have been advised that on December 1, 1975, you received a subpoena to appear before the legislative committee the following day and produce the names, addresses and clinical data of persons participating in a study of the possible effects of PBB on human health. You have previously discussed this subpoena with one of my assistants in the Municipal Affairs Division. As part of the discussion your attention was called to the following statutes pertaining to confidentiality of records:

> 1957 PA 39; MCLA 325.131 *et seq;* MSA 14.57(1) *et seq.*
> 1967 PA 270; MCLA 331.531 *et seq;* MSA 14.57(21) *et seq.*
> 1969 PA 306; MCLA 24.201 *et seq;* MSA 3.560(101) *et seq* at § 22(1) (a), (c) and (f) [MCLA 24.222; MSA 3.560(122)].

Since you have been served with a subpoena, I will address only the question of whether the Department of Public Health can be required to provide the legislative committee in question with records or information through which study participants can be identified.

I am of the opinion that the information requested under the subpoena must be provided to the committee.

On March 19, 1975, in a letter directed to Senator John R. Otterbacher,

I concluded that the Department of Social Services was required to submit to a legislative committee investigating nursing homes, homes for the aged and adult foster homes, certain cost information under the control of the director of the Department of Social Services. In spite of a statutorily created confidentiality placed on the materials, I indicated in my reply to Senator Otterbacher that the term "confidential" is not a bar to legislative access to information necessary to the legislature in the formulation of policies and laws.

The responsibility of state departments, agencies and boards to respond to valid legislative subpoena is made clear in 1952 PA 46; MCLA 4.541; MSA 2.185, which states in pertinent part as follows:

> "*Notwithstanding any other provision of law to the contrary, any* standing or select *committee* of the senate or the house of representatives, and any joint select committee of the senate and house of representatives, *shall be authorized to subpoena and have produced* before any such committee, or inspect *the records and files of any state department, board, institution or agency;* and it shall be the duty of any state department, board, institution or agency to produce before the committee as required by the subpoena, or permit the members of any such committee to inspect its records and files. Such records and files shall be subpoenaed, examined or used only in connection with the jurisdiction and purposes for which the committee was created." [Emphasis added]

The authority and necessity for legislative investigation was clearly stated by the United States Supreme Court in *McGrain* v *Daugherty,* 273 US 135 at 174, 175; 47 S Ct 319; 71 L Ed 580 (1927).

> "We are of opinion that the power of inquiry — with process to enforce it — is an essential and appropriate auxiliary to the legislative function. It was so regarded and employed in American legislatures before the Constitution was framed and ratified. . . .
>
> ". . . A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information — which not infrequently is true — recourse must be had to others who do possess it. Experience has taught that mere requests for such information often are unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed. All this was true before and when the Constitution was framed and adopted. In that period the power of inquiry — with enforcing process — was regarded and employed as a necessary and appropriate attribute of the power to legislate — indeed, was treated as inhering in it. Thus there is ample warrant for thinking, as we do, that the constitutional provisions which commit the legislative function to the two houses are intended to include this attribute to the end that the function may be effectively exercised."

The exercise of the power of inquiry is not, however, without limitations.

The legislative investigation must be in aid of a legislative purpose and the information sought must be pertinent to the inquiry made. *Sinclair* v *United States,* 279 US 263; 49 S Ct 268; 73 L Ed 692 (1929); *Watkins* v *United States,* 354 US 178; 77 S Ct 1173; 1 L Ed 2d 1273 (1957).

The investigation undertaken pursuant to House Resolution 171 has as its purpose an inquiry into the operation of various state departments and agencies with regard to the recent poisoning of livestock. From the resolution and its preamble, it is clear that the legislature has authorized an investigation of the situation to determine what action or inaction had been effected by the respective departments and agencies.

After receiving the committee's report and recommendations, there are many types of legislative action which may be taken. The legislature, for example, may wish to change the health laws of the State of Michigan or alter the basic organization and operations of the departments and agencies involved. It may also conclude that no changes are necessary in any existing laws. Thus there is no doubt that the resolution indicates a valid legislative purpose.

As I have earlier indicated there is, in addition to the requirement that the inquiry be an aid of a legislative purpose, the requirement that the information sought be pertinent to the investigation. The subpoenaed material includes the names and addresses of persons who participated in a Department of Public Health survey to determine the effect of ingestion of PBB on humans. Certainly that study constitutes a part of the actions taken by the Department of Public Health and as such is pertinent to the scope of the committee's inquiry as set forth in House Resolution 171 and the committee is clearly authorized to review such actions.

In concluding that the materials shall be provided to the committee, I am aware that publication of the names and addresses of the participants would violate the promise of confidentiality under which the information was obtained. Moreover, if the department is engaged in this particular instance in a "medical research project" within the meaning of 1957 PA 39, *supra,* then the statutory confidentiality would attach to the study. However, providing the materials to the committee does not constitute public disclosure of the names and data. In the course of using the material, the committee may not disregard the rights of privacy of individuals referred to in the study by unreasonably or arbitrarily making public the names and addresses contained in the study.

As previously discussed the legislature's power of inquiry must recognize certain limitations. In this case 1952 PA 46 specifically provides: "Such records and files shall be subpoenaed, examined or used only in connection with the jurisdiction and purposes for which the committee was created." Thus, the legislature has restricted the use of information obtained by an investigative committee solely to the exact purposes of that committee. It has not, for example, indicated that records otherwise private or confidential shall become public records simply because they are subpoenaed by a legislative committee.

Apart from Michigan's specific statutory limitation, the Courts have generally recognized an individual's right of privacy in the face of a legis-

lative inquiry. In *Sinclair* v *United States,* 279 US 263 at 292, 293, the U. S. Supreme Court stated:

> "It has always been recognized in this country, and it is well to remember, that few if any of rights of the people guarded by fundamental law are of greater importance to their happiness and safety than the right to be exempt from all unauthorized, arbitrary or unreasonable inquiries and disclosures in respect of their personal and private affairs. . . ."

The U. S. Supreme Court then went on to quote from earlier decisions as follows:

> "In *Kilbourn* v. *Thompson,* 103 U. S. 168, this court, speaking through Mr. Justice Miller, said (p. 190): '. . . we are sure that no person can be punished for contumacy as a witness before either House, unless his testimony is required in a matter into which that House has jurisdiction to inquire, and we feel equally sure that neither of these bodies possesses the general power of making inquiry into the private affairs of the citizen.' . . .
>
> "In *Re Pacific Railway Commission,* (Circuit Court, N. D., California) 32 Fed. 241, Mr. Justice Field, announcing the opinion of the Court, said (p. 250): 'Of all the rights of the citizen, few are of greater importance or more essential to his peace and happiness than the right of personal security, and that involves, not merely protection of his person from assault, but exemption of his private affairs, books, and papers from the inspection and scrutiny of others. Without the enjoyment of this right, all other rights would lose half their value.' And the learned Justice, referring to *Kilbourn* v. *Thompson, supra,* said (p. 253): 'This case will stand for all time as a bulwark against the invasion of the right of the citizen to protection in his private affairs against the unlimited scrutiny of investigation by a congressional committee.' . . .
>
> "In *Interstate Commerce Commission* v. *Brimson,* 154 U. S. 447, Mr. Justice Harlan, speaking for the court said (p. 478): 'We do not overlook these constitutional limitations which, for the protection of personal rights, must necessarily attend all investigations conducted under the authority of Congress. Neither branch of the legislative department, still less any merely administrative body, established by Congress, possesses, or can be invested with, a general power of making inquiry into the private affairs of the citizen. . . . We said in *Boyd* v. *United States,* 116 U. S. 616, 630, — and it cannot be too often repeated, — that the principles that embody the essence of constitutional liberty and security forbid all invasions on the part of the government and its employees of the sanctity of a man's home and the privacies of his life.' "

From the statements set forth in *Sinclair,* the rule evolves that if an investigation becomes merely an inquiry into the private lives of citizens, then such inquiry is no longer pertinent to a valid legislative purpose. Any statement to the contrary would subvert the constitutional safeguards which seek to deter governmental intrusion into the private and personal

affairs of citizens. See also *Opinions of the Justices,* 328 Mass 655; 102 NE2d 79 (1951); *United States* v *Orman,* 207 F2d 148 (1953); and *Dubois* v *Gibbons,* 2 Ill 2d 392; 118 NE2d 295 (1954).

The committee is therefore limited in that the information received must be restricted to use in connection with the legislative purpose. In addition, the purpose of the investigation must not become transformed into an inquiry solely of the private lives of the participants in the study.

It should also be noted that the legislature may, if it wishes, place express limitations on the right of an investigative committee to obtain records and files in the course of an inquiry.

This may be done in one of two ways: First, in drafting a resolution creating an investigative committee, the legislature may affirmatively state that information to which a statutorily confidence attaches may not be subpoenaed by the committee. For example, House Resolution 171 could have precluded the committee from obtaining confidential records involved in a "medical research project" as defined in 1957 PA 39, *supra.*

Second, the legislature may amend 1952 PA 46, *supra,* and provide that a legislative investigating committee may not obtain specifically described materials or any information made confidential by other statutes.

In summary, therefore, you are advised that the department must provide the committee with the names, addresses and clinical data obtained in the PBB study as demanded by subpoena issued by the committee. However, your presentation of these materials to the committee pursuant to its subpoena does not absolve the members of the committee from their duty to respect the right of privacy enjoyed by the participants in the study.

FRANK J. KELLEY,
Attorney General.

760423.2

ATOMIC ENERGY: Control of transport of nuclear waste

PUBLIC HEALTH, DEPT. OF: Control of transport of nuclear waste

UNITED STATES: Preemption of state law

The state is preempted, by congressional enactment of the Atomic Energy Act, from controlling the transport of nuclear waste, spent fuel elements and other radio active materials. This responsibility is under the sole control of the Federal Nuclear Regulatory Commission in the absence of a turnover agreement vesting the state with duties and powers to control such transport.

Opinion No. 4979 April 23, 1976.

Maurice S. Reizen, M.D., Director
Michigan Department of Public Health
3500 North Logan Street
Lansing, Michigan

You have asked my opinion on the following:

To what degree is the state preempted by the Nuclear Regulatory