

and property shall be exempt from taxation by the state, or any political subdivision thereof."

This tax exemption would be jeopardized if Blue Shield were an insurance company rather than a provider of prepaid benefits. See *Associated Hospital Service of Maine v George F. Mahoney, The Health Insurance Association of America, et al*, Intervenors, 1965, 213 A2d 712; 161 Me. 391.

It is therefore my opinion that Blue Shield may not honor an assignment from a patient to a non-participating physician.

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Attorney General.

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COUNTIES: Duty to carry out legislative mandate

Where the legislature imposes a duty upon a county requiring the expenditure of funds, county officials are obligated to carry out the legislative mandate despite the fact that the legislature has failed to appropriate state funds to perform the duties imposed upon the county.

Opinion No. 5023

June 4, 1976.

Hon. Thomas G. Sharpe
State Representative
Capitol Building
Lansing, Michigan

You have asked for my opinion on the following questions:

1. When a county clerk is mandated to perform specific duties as cited in the above-captioned act,¹ is the board of commissioners likewise mandated to provide necessary staff and/or systems and supplies?
2. Does the county clerk make the determination as to the number of persons and training required of staff and also the type and amount of systems and supplies required?

In 20 CJS, Counties, § 62, pp 806, 807, it is stated:

"As counties are but subdivisions of the state created by the legislature for political and civil purposes as agencies of state government . . . they are entirely subject to legislative control except so far as restricted by the Constitution of the State."

This principle governs the consideration of the financial burden a county must bear in fulfilling the responsibility imposed on it by the legislature. A county may not fail to discharge obligations imposed upon it by the

¹ You refer to the Political Reform Act, 1975 PA 227, § 43; MCLA 169.43; MSA 4.1701(43). However, in light of the Supreme Court decision of March 29, 1976 declaring 1975 PA 227 unconstitutional, I am addressing your questions with the broader context of the relationship between the state and the counties.

legislature. *Sturgis v Allegan County*, 343 Mich 209; 72 NW2d 56 (1955). Regardless of the financial burden, counties are responsible for faithfully executing legislative mandate.

As stated in *Moore v Harrison*, 224 Mich 512, 518; 195 NW 306, 308 (1923):

"The revenues of a county are not the property of the county in the sense in which the revenue of a private person or corporation is regarded. A county being a public corporation existing only for public purposes connected with the administration of a state government, its revenue is subject to the control of the legislature, and when the legislature directs the application of a revenue to a particular purpose . . . a duty is imposed and an obligation created on the county."

Such examples as county financial support of roads which must be maintained according to statutory standards,² operation of the circuit courts,³ enforcement of the state's criminal statutes in the county where such an offence is committed, and the ability to contract and pay obligations imposed by law⁴ serve to illustrate the fact that counties are responsible for carrying out obligations imposed upon them by the legislature.

The Supreme Court affirmed the rule holding a county liable for the financial burden incurred in the process of compliance with legislative directive in *Wayne County Jail Inmates v Wayne County Sheriff*, 391 Mich 359, 364-365; 216 NW2d 910, 912 (1974) wherein it is stated:

"While it is true that local boards of commissioners have legislative powers in some matters, in carrying out the duties imposed upon them by the Legislature their function is executive or administrative, and they have no legislative function. . . . Whenever a board's executive or administrative efforts result in a failure to perform duties legislatively imposed, the court does not hesitate to order performance.

"* * *

"In the first instance it is manifestly within the province of the commissioners to determine how to do their duty. They have full responsibility for the plan and detail. . . . But upon a showing that the commissioners have failed or refused to meet their responsibility under the statute . . . the court can and will direct compliance with whatever specificity is required to achieve the Legislature's directive.

"To rule otherwise would enable local commissioners to thwart the legislative intent by endless foot dragging."

More recently, in *McLachlan v Secretary of State*, . . . Mich App . . . (1976), affirmed by the Michigan Supreme Court on April 5, 1976, the Court of Appeals held that the failure of the legislature to appropriate

² 1951 PA 234, § 1, as amended by 1954 PA 12, § 1; MCLA 224.21; MSA 9.121.

³ *Wayne Circuit Judges v Wayne County*, 386 Mich 1; 190 NW2d 228 (1971); 59 ALR 3d 548; cert den 405 US 923; 39 L Ed 794; 92 S Ct 961.

⁴ *People ex rel Bristow v Board of Supervisors of Macomb County*, 3 Mich 475 (1855). See also OAG, 1957-1958, No 3192, p 41 (February 4, 1958).

money for holding a presidential primary election does not relieve local units of government from the responsibility of paying for the cost of holding the election. In so deciding, the Court stated:

" . . . As long ago as 1890 the Michigan Supreme Court considered an election law which required expenditure of money but did not provide for payment of such expenses. The opinion states:

" 'It is of no consequence that expense must be incurred, and that the statute is silent upon the question of payment. Whenever an active duty is imposed upon municipalities, or public officers representing municipalities, the duty imposed carries with it the obligation on the part of the municipality to perform the act, bear the expense, and provide for its payment. We find nothing in the above provisions which is unconstitutional, and not within the exclusive province of the Legislature.'

" *Common Council of the City of Detroit v Rush*, 82 Mich 532, 542, 543 (1890)."

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COUNTIES: Control of county board of commissioners over county officers and employees

OFFICERS AND EMPLOYEES: Political participation by county officers and employees

HOME RULE CITIES: Political participation by employees

Apart from its control of the county budget, a board of county commissioners has no control over the selection, dismissal or conditions of employment of elected county officials.

A personnel policy adopted by a board of county commissioners does not apply to elected county officials or to deputies and employees of elected county officials.

A personnel policy adopted by a board of county commissioners prohibiting county employees from running for a partisan political office is valid. Such a policy, however, applies only to county employees subject to the supervision of the board.

A city charter provision prohibiting discrimination against employees for political reasons or affiliations does not invalidate a civil service rule that prohibits candidacy for public office by a city employee.

Opinion No. 5046

June 10, 1976.

Hon. Jerome T. Hart
Chairman
Senate Appropriations Committee
The Capitol
Lansing, Michigan 48901

Hon. James E. O'Neill, Jr.
Hon. Donald J. Albosta
State Representatives
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