

760611.2

RECORDS: Federal Family Educational Rights and Privacy Act

PRIVACY: Federal Family Educational Rights and Privacy Act

An institution of higher education that is the recipient of federal funds is required to make its records concerning a student available to that student even though he or she is no longer enrolled as a student with the following exceptions:

1. Financial records of the parents of the student
2. Confidential letters of recommendations placed in the student's file prior to January 1, 1975
3. Records as to which the student has signed a waiver of the right of access if the records pertain to confidential recommendations respecting admission to an educational institution, an application for employment or receipt of an honorary recognition.

If an institution of higher education does not receive federal funds, it is not legally required to provide a student or former student with confidential information concerning the student in its files in the absence of a subpoena or judicial order.

Opinion No. 5028

June 11, 1976.

Honorable John F. Markes
State Representative
The Capitol
Lansing, Michigan 48901

You have requested my opinion on a question which may be stated as follows:

May universities send to school districts confidential evaluations of teacher applicants that the universities do not allow the teacher applicants to examine?

Along with your request, you have provided me with the following information:

"Every university sends a document called 'Credentials' or 'Confidential Records' to each school district where a new teacher has requested a position. If the teacher is hired, these 'Credentials' are placed in the teacher's personnel file. The 'Credentials' contain a transcript of grades, as well as confidential statements made by university personnel about the teacher's character and fitness. No teacher is allowed to examine this document."

The Family Educational Rights and Privacy Act of 1974, 88 Stat 571 (1974); 20 USCA 1232g, provides that all educational institutions that receive federal funds must make the complete records on each student available at that student's request. It is further provided in the act that students shall continue to have access to their files even though they are no longer enrolled in the particular institution.

The act provides as follows:

"(a) (1) (A) *No funds shall be made available under any applicable program* to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students *who are or have been in attendance* at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children. . . .

* * *

"(d) For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of post secondary education the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student." (emphasis added) 88 Stat 571, § 438(a) (1) (A), and § 438(d); 20 USCA 1232g(a) (1) (A), and 1232g(d)

The act, however, contains certain limitations on the student's right to examine his file. It prohibits students from seeing any of their parents' financial records included in the file. Also prohibited is an absolute right of the student to see confidential letters of recommendation placed in the file prior to January 1, 1975. Finally, the student may limit his own right to see confidential statements included in his file under the following provisions:

"iii) if the student has signed a waiver of the student's right of access under this subsection in accordance with subparagraph (C), confidential recommendations—

(I) respecting admission to any educational agency or institution,

(II) *respecting an application for employment, and*

(III) respecting the receipt of an honor or honorary recognition." (emphasis added)

88 Stat 1858, § 438(a)(1)(B); 20 USCA 1232g(a)(1)(B)

The teacher in your question more than likely attended an institution which is covered by this act as a recipient of federal funds. I assume, therefore, that the federal act applies to that teacher in his status as a student vis-a-vis the university which is sending out the confidential "credentials" to school districts where the teacher is a job applicant. If, however, the institution does not receive federal funds, there is no law requiring the institution to provide the student or former student with confidential information in its files. It should be further noted, however, that such records would still be subject to any lawfully issued subpoena or judicial order as authorized by 20 USCA 1232g(b) (2) (B) or to subpoena by a legislative committee (1952 PA 46; MCLA 4.541; MSA 2.185).

In summary, it is my opinion that, unless the requested information fits into a statutory exception or the student has signed a waiver of his right to view the contents of his confidential file, universities may not, consistent with their receipt of federal funds, prohibit teacher applicants from exam-

ining the confidential evaluations of such applicants contained in the credentials files sent by universities to school districts.

760611.15 (117)

FRANK J. KELLEY,
Attorney General.

CONSTITUTION OF MICHIGAN: Art 4, § 51
Art 9, § 21
Art 9, § 23

ECONOMIC DEVELOPMENT CORPORATIONS: Nature of

INCOMPATIBILITY: Service by councilman, mayor, county commissioners, elected county officials as active member of an economic development corporation

The economic development corporations act which authorizes the creation of non-profit corporations having a public purpose is valid. Inasmuch as the economic development corporations act gives the municipality that creates it control over the non-profit corporation, it is a public agency organized for a public purpose.

Participation by a councilman, mayor, or county commissioner on the board of directors or on a project citizens district council of an economic development corporation is incompatible.

Participation by an elected county official, a school board member, or a state officer on the board of directors or on a project citizens district council of an economic development corporation may be incompatible depending upon the particular duties and functions of these public officials.

Opinion No. 5047

June 11, 1976.

Honorable Thomas H. Brown
State Representative, 37th District
P.O. Box 119
Lansing, Michigan 48901

Citing the economic development corporations act (herein the "EDC act"), 1974 PA 338; MCLA 125.1601 *et seq*; MSA 5.3520(1) *et seq*, you have requested my opinion on the following question:

"If an Economic Development Corporation is formed as provided for in P.A. 338 of 1974, would a councilman, mayor, county commissioner, elected county official, school board member, state officer or state legislator be in conflict of interest if he joined as an active member of such a Corporation?"

The EDC act, section 4,¹ provides that the chief executive officer or county chairperson of the appropriate municipality² shall appoint a nine-

¹ MCLA 125.1604; MSA 5.3520(4).

² A municipality is defined as a county, city, village or township. MCLA 125.1603; MSA 5.3520(3).