

retirement allowance from Chapter 1. The basis for the computation of his retirement benefits is described in MCLA 38.386(3); MSA 15.895(6)(3).

It should be emphasized, however, that Dr. H must first retire from his university employment before he may draw a retirement allowance from Chapter 1. MCLA 38.215; MSA 15.893(15).

FRANK J. KELLEY,
Attorney General.

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MARRIED WOMEN: Creditworthiness.

CIVIL RIGHTS: Equal credit opportunity act.

A married woman may bind her separate estate for necessities as well as luxuries.

A creditor who refuses to extend credit or refuses to grant a loan to a woman because of the fact that she is married is in violation of the Federal Equal Credit Opportunity Act as well as 1974 PA 246, since, under Michigan law, a married woman's individual property is subject to levy in payment of her individual debts.

Opinion No. 5037.

November 8, 1976.

Hon. Gary M. Owen
State Representative
Capitol Building
Lansing, Michigan

You have requested an opinion clarifying the relationship between the federal Equal Credit Opportunity Act 15 USC 1691 (1974) and Michigan law relative to the contractual status of married women. Restated, the question may be posed as follows:

Under Michigan law, may a creditor refuse to extend credit to a married woman who wishes to individually contract for necessities or luxuries?

The federal Equal Credit Opportunity Act which took effect on October 28, 1975 provides in pertinent part:

15 USC 1691.

"(a) It shall be unlawful for any creditor to discriminate against any applicant on the basis of sex or marital status with respect to any aspect of a credit transaction.

"(b) An inquiry of marital status shall not constitute discrimination for purposes of this title [15 USCS §§ 1691-1691e] if such inquiry is for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit, and not to discriminate in a determination of creditworthiness.

15 USC 1691d.

“(b) Consideration or application of State property laws directly or indirectly affecting creditworthiness shall not constitute discrimination for purpose of this title [15 USCS §§ 1691-1691e].”

As these sections permit inquiry into marital status in order to ascertain the creditor's rights and remedies under state law, it is necessary to examine existing Michigan property law which could affect a married woman's creditworthiness.

At the common law, a woman had no separate legal existence from her husband and her property either belonged to her husband or was under his control. In addition, she lacked capacity to enter into a contract. Florer, *The Contracts of Married Women in Michigan*, 4 Mich St B J, 99, 100 (1924).

In 1855 the legislature enacted the first of three statutes which eliminated the disabilities of coverture. This act permitted a married woman to hold property in her own name, allowed her to transfer title and prohibited its attachment for her husband's debts. 1855 PA 168, §§ 1-5; MCLA 557.1-557.5; MSA 26.161-26.164. Further, it expressly provided that a woman is liable to be sued on any contract made in relation to her sole estate.

Thus, in *Campbell v White*, 22 Mich 177 (1871) the Michigan Supreme Court held that a married woman residing with her husband and possessed of a separate estate was liable on a contract for merchandise which she contracted for on her individual credit. See also *Hirshfield v Waldron*, 83 Mich 116; 47 NW 239 (1890); *Meads v Martin*, 84 Mich 306; 47 NW 583 (1890).

In 1911, the second of the married women's property statutes became law, 1911 PA 196, § 11; MCLA 557.11; MSA 26.171. This act granted married women the right to contract and sue on their own behalf. In 1917 the third and last of the series of statutes was enacted. 1917 PA 158, §§ 1-5; MCLA 557.51-557.55; MSA 26.181-26.185. It enabled married women to become liable on joint contracts with their husbands to the extent of their joint estates.

Thus, within the meaning of Section (b) of 15 USC 1691d, it is clear that a married woman seeking credit for any purpose and being possessed of a separate estate is “creditworthy” if she has a sufficient separate estate to meet the obligations to be incurred. Stated another way, there exists no legal impediment in the law of this state to a creditor's suit against a married woman arising out of disabilities of coverture under the circumstances hereinabove set forth.

It may also be noted that Const 1963, art 10, § 1 provides in pertinent part:

“*The disabilities of coverture as to property are abolished. The real and personal estate of every woman acquired before marriage and all real and personal property to which she may afterwards become entitled shall be and remain the estate and property of such woman, and shall not be liable for the debts, obligations or engagements of her husband, and may be dealt with and disposed of by her as if she were*

unmarried. Dower may be relinquished or conveyed as provided by law." [Emphasis added]

In *City Finance Co v Kloostra*,¹ 47 Mich App 276; 209 NW2d 498 (1973), the court held that while Const 1963, art 10, § 1, *supra*, abolishes all disabilities of coverture denying married women the capacity to enter into contracts, defenses of coverture protecting the married women's separate estate from *joint obligations* remain in force. This decision, however, is consistent with the opinion expressed earlier, i.e. a married woman individually contracting and possessing a *separate* estate is liable on the contract. *Kloostra* involved a *joint debt* between a wife and husband for the purchase of an automobile and only limited the wife's liability for the debt to the *joint estate* of husband and wife.

It may be noted that Michigan, consistent with the federal Equal Credit Opportunity Act, *supra*, prohibits discrimination in rating a person's creditworthiness on the basis of marital status. 1974 PA 246; MCLA 750.147a; MSA 28.344(1) states:

"(1) A person shall not discriminate in extending credit or granting a loan on the basis of race, color, religion, national origin, marital status, sex, or physical handicap unless that person:

"(a) Is a non-profit corporation whose members share the same:

"(i) racial, religious, ethnic, marital or sexual characteristic;

or

"(ii) physical handicap; or

"(iii) blend of these characteristics and

"(b) Extends credit or grants a loan only to its members.

"(2) A person shall not discriminate in the rating of a person's creditworthiness on the basis of race, color, religion, national origin, marital status, sex, or physical handicap.

"(3) A person who violates the provisions of subsections (1) or (2) is guilty of a misdemeanor punishable by a fine of not more than \$1,000.00.

"(4) A person who violates the provisions of subsection (1) or (2) shall be liable in a civil action to the injured party for the amount of (a) \$200.00 or (b) damages, whichever is greater. Actions brought pursuant to rule 208 of the General Court Rules of 1963 shall be limited to those damages provided in subsection (4)(b). The prevailing party in the civil action shall be entitled to recover court costs and reasonable attorney fees. The right of action under this subsection shall be unassignable."

In summary, the defense of coverture only protects a married woman's separate estate from her husband's debts, and there is no legal impediment to the enforcement of a suit arising out of a contractual relationship entered

¹In *Detroit Newspaper Industrial Credit Union v McDonald*, 9 Mich App 146, 156 NW2d 62 (1967), the court, by way of dictum, intimated that Const 1963, art 10, § 1 abolished both the disabilities and defenses of married women in contractual situations.

into with a married woman in her own name. It is, therefore, my opinion that the creditworthiness of a married woman is not affected by state property laws and that a married woman is responsible for her own obligations regardless of whether they are incurred by purchase of a luxury or a necessity.

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CREDIT UNIONS: Investment of deferred compensation funds.

CONSTITUTION OF MICHIGAN: Art 9, § 19.

Deferred compensation funds of employees accumulated by a school district may not be invested in a credit union.

Opinion No. 4995

November 9, 1976.

Honorable John Otterbacher
State Senator
The Capitol
Lansing, Michigan

You have requested my opinion as to whether a school district may deposit funds accumulated under an approved deferred compensation program in a federally insured state chartered credit union. The accumulated funds are to be deposited by the district in a special account of the credit union.

The Michigan Credit Union Act, 1925 PA 285, § 4(a), MCLA 490.4(a); MSA 23.484(a), specifically authorizes credit unions to establish different classes of deposits providing the written approval of the Commissioner of the Financial Institutions Bureau is received. 1925 PA 285, § 4(a), *supra*, also provides that a credit union may "receive the funds of its members either as payments on shares or as deposits . . ." 1925 PA 285, *supra*, § 5.

A credit union is, by definition, an incorporated cooperative society in which the members are the owners and to be a member of a credit union, an individual must subscribe to at least one share of stock in the credit union. Each member is entitled to cast one vote in such matters as the selection of directors, dissolution, and conversion of the credit union to a federal charter. Thus, although the deferred compensation deposits would be in a special non-voting account, the fact that the school district must become a member of the credit union to be eligible to open a special account means that the school district is entitled to vote as a member.

Const 1963, art 9, § 19 provides:

"The state shall not subscribe to, nor be interested in the stock of any company, association or corporation, except that funds accumulated to provide retirement or pension benefits for public officials and employees may be invested as provided by law; and endowment funds