Exhibit 10

WARREN C. EVANS

Wayne County Sheriff

OFFICE OF THE SHERIFF

1231 ST. ANTOINE • DETROIT, MI 48226
TEL: (313) 224-2222 • FAX (313) 224-2367

MEMORANDUM OF LAW

TO: **Sheriff Warren C. Evans**

FROM: **Kate Ben-Ami, Legal Counsel**

RE: **Federal law, commonly known as TARP Act, preempts state law governing foreclosure sales.**

DATE: **January 30, 2009**

You have asked if state law authorizing local county sheriffs to conduct mortgage foreclosure sale is preempted by the "Emergency Economic Stabilization Act of 2008".

A. STATE LAW

M.C.L.A. Section 600.3216 states that "the sale shall be at public sale, between the hour of 9 o'clock in the forenoon and 4 o'clock in the afternoon, at the place of holding the circuit court within the county in which the premises to be sold, or some part of them, are situated, and shall be made by the person appointed for that purpose in the mortgage, or by the sheriff, undersheriff, or a deputy sheriff of the county, to the highest bidder."

Please TAKE Note

M.C.L.A. Section 600.3204 states that:

(1) A party may foreclose a mortgage by advertisement if all of the following circumstances exist:

(a) A default in a condition of the mortgage has occurred, by which the power to sell became operative.

ALSO Note →

(b) An action or proceeding has not been instituted, at law, to recover the debt secured by the mortgage or any part of the mortgage; or, if an action or proceeding has been instituted, the action or proceeding has been discontinued; or an execution on a judgment rendered in an action or proceeding has been returned unsatisfied, in whole or in part.

(c) The mortgage containing the power of sale has been properly recorded.

(d) The party foreclosing the mortgage is either the owner of the indebtedness or of an interest in the indebtedness secured by the mortgage or the servicing agent of the mortgage.

(2) If a mortgage is given to secure the payment of money by installments, each of the installments mentioned in the mortgage after the first shall be treated as a separate and independent mortgage. The mortgage for each of the installments may be foreclosed in the same manner and with the same effect as if a separate mortgage were given for each subsequent installment. A redemption of a sale by the mortgagor has the same effect as if the sale for the installment had been made upon an independent prior mortgage.

(3) If the party foreclosing a mortgage by advertisement is not the original mortgagee, a record chain of title shall exist prior to the date of sale under section 3216 evidencing the assignment of the mortgage to the party foreclosing the mortgage.

These two sections of the Revised Judicature Act of 1961 govern the Sheriff's conduct of mortgage foreclosure sales.

Please Note →

B. FEDERAL LAW

On October 3, 2008, the U.S. Congress enacted the "Emergency Economic Stabilization Act of 2008" into law. Its purpose is to provide authority to the Treasury Secretary to restore liquidity to the U.S. Financial system and to **ensure the economic well being of Americans.** (Emphasis supplied) 12 U.S.C.A. 5219 et. seq.

Title I of the Act authorizes the Secretary to establish a Troubled Asset Relief Program (T.A. R. P.) to purchase troubled assets from financial institutions.

Section 109 addresses foreclosure mitigation efforts. It states that for mortgages and mortgage-backed securities acquired through TARP, the Secretary **must implement a plan** to mitigate foreclosures and to encourage servicers of mortgages to modify loans through Hope for Homeowners and other programs. Additionally, the Secretary may use loan guarantees and credit enhancements to avoid foreclosures.

The Secretary **is required** to coordinate with federal entities that hold troubled assets in an effort to identify opportunities to modify loans, especially where the anticipated recovery on the principal outstanding obligation of the mortgage under the modification is likely to be greater than, on a net present value basis, the anticipated recovery on the principal outstanding obligation of the mortgage through foreclosure.

Clearly, in a City and County where 18% of all homes are abandoned due to foreclosure, the TARP's federal mandate to mitigate foreclosures is welcomed with open arms.

The TARP's purpose to **mitigate foreclosures** is highlighted in many sections of the law:

- Section 2. PURPOSES: **The purposes of this Act are ....to protect home values and preserve homeownership...**

- Section 103. CONSIDERATIONS (3): **In exercising the authorities grated in this Act, the Secretary shall take into consideration the need to help families keep their homes and to stabilize communities....**
- Section 104. FINANCIAL STABILITY OVERSIGHT BOARD: **There is established the Financial Stability Oversight Board, which shall be responsible for (B) reviewing the effect that programs developed under this Act have in assisting Americans families in preserving home ownership....**
- Section 116.OVERSIGHT AND AUDITS (a): **The Comptroller General of the United States, shall upon establishment of the TARP, commence ongoing oversight of the ... (A) performance of the TARP in meeting the purposes of this Act, particularly (i) foreclosure mitigation...** and
- Section 125. CONGRESSIONAL OVERSIGHT PANEL (a): **The Oversight Panel shall submit regular reports to the Congress, to include...(iv) the effectiveness of the foreclosure mitigation efforts....**

Please Note:→

C. FEDERAL PREEMPTION

The United States Supreme Court has set forth three tests that it uses to determine if a state statute has been pre-empted or superseded:

• Whether the scheme of federal regulation is so pervasive as to make reasonable the inference that Congress left no room for the states to supplement it; **Wisconsin Public Intervenor v. Mortier, 501 U.S. 597, 111 S. Ct. 2476, 115 L. Ed. 2d 532, 33 Env't. Rep. Cas. (BNA) 1265, 21 Envtl. L. Rep. 21127 (1991); Siegel v. American Sav. & Loan Ass'n, 210 Cal. App. 3d 953, 258 Cal. Rptr. 746 (1st Dist. 1989)**

• Whether the federal statutes touch a field in which the federal interest is so dominant that the federal system must be assumed to preclude enforcement of state laws on the same subject; **Com. of Pa. v. Nelson, 350 U.S. 497, 76 S. Ct. 477, 100 L. Ed. 640 (1956), reh'g denied, 351 U.S. 934, 76 S. Ct. 785, 100 L. Ed. 1462 (1956) (involving the question whether the federal Smith Act superseded a state sedition statute, which question was answered in the affirmative)** and

• Whether enforcement of the state statute presents a serious danger of conflict with the administration of the federal program; **Com. of Pa. v. Nelson, 350 U.S. 497, 76 S. Ct. 477, 100 L. Ed. 640 (1956), reh'g denied, 351 U.S. 934, 76 S. Ct. 785, 100 L. Ed. 1462 (1956); People v. Giese, 95 Misc. 2d 792, 408 N.Y.S.2d 693 (Sup. Ct. 1978), order aff'd, 68 A.D.2d 1019, 414 N.Y.S.2d 947 (2d Dep't 1979).**

In Commonwealth of Pennsylvania v. Nelson, 350 U.S. 497, 76 s. Ct. 477, 100 L. Ed. 1462 (1956), Steve Nelson, an acknowledged member of the Communist Party, was convicted in the Court of Quarter Sessions of Allegheny County, Pennsylvania, of a violation of the Pennsylvania Sedition Act and sentenced to imprisonment for twenty years and to a fine of $10,000 and to costs of prosecution in the sum of $13,000. The Superior Court affirmed the conviction. 172 Pa.Super. 125, 92 A.2d 431. The Supreme Court of Pennsylvania, recognizing but not reaching many alleged serious trial errors and conduct of the trial court infringing upon respondents' right to due process of law, decided the case on the narrow issue of supersession of the state law by the Federal Smith Act.

In its opinion, the court stated:
'(t)his Court, in considering the validity of state laws in the light of federal laws touching the same subject, has made use of the following expressions: conflicting; contrary to; occupying the field; repugnance; difference; irreconcilability; inconsistency; violation; curtailment; and interference. But none of these expressions provides an infallible constitutional test or an exclusive constitutional yardstick. In the final analysis, there can be no one crystal clear distinctly marked formula.' Hines v. Davidowitz, 312 U.S. 52, 67, 61 S.Ct. 399, 404, 85 L.Ed. 581

The precise holding of the court, and all that was before it for review, is that the Smith Act of 1940, as amended in 1948, which prohibits the knowing advocacy of the overthrow of the Government of the United States by force and violence, supersedes the enforceability of the Pennsylvania Sedition Act which proscribes the same conduct.

It should be said at the outset that the decision in this case does not affect the right of States to enforce their sedition laws at times when the Federal Government has not occupied the field and is not protecting the entire country from seditious conduct. The distinction between the two situations was clearly recognized by the court below. Nor does it limit the jurisdiction of the States where the Constitution and Congress have specifically given them concurrent jurisdiction, as was done under the Eighteenth Amendment and the Volstead Act, 27 U.S.C.A., United States v. Lanza, 260 U.S. 377, 43 S.Ct. 141, 67 L.Ed. 314.

We examine these Acts only to determine the congressional plan. Looking to all of them in the aggregate, the conclusion is inescapable that Congress has intended to occupy the field of sedition. Taken as a whole, they evince a congressional plan, which makes it reasonable to determine that no room has been left for the States to supplement it. Therefore, a state sedition statute is superseded regardless of whether it purports to supplement the federal law. As was said by Mr. Justice Holmes in Charleston & Western Carolina R. Co. v. Varnville Furniture Co., 237 U.S. 597, 604, 35 S.Ct. 715, 717, 59 L.Ed. 1137:

'When Congress has taken the particular subject-matter in hand, coincidence is as ineffective as opposition, and a state law is not to be declared a help because it attempts to go farther than Congress has seen fit to go.'

I assert that the inescapable conclusion found in **Commonwealth of Pennsylvania v. Nelson** that Congress intended to occupy the field of sedition applies equally well in our current situation. Both the Smith Act and the TARP Act, taken as a whole, evince a congressional plan, which makes it reasonable to determine that no room has been left for the States to supplement it. The TARP Act occupies the field of mitigating foreclosures.

The Sheriff's continued performance of mortgage foreclosure sales, under the applicable statute, presents a serious danger of conflict with the administration of the federal TARP program

D. PREMPTION BY THE EMERGENCY AND ECONOMIC STABILIZATION ACT OF 2008, COMMONLY KNOWN AS THE "TROUBLED ASSET RELIEF PROGRAM" (TARP) ACT

Please Note:→ By enacting TARP, the Congress has pre-empted the Michigan statute governing mortgage foreclosures.

This { The Sheriff would violate the TARP Act by conducting mortgage foreclosure sales. It is likely that many of the assets involved in the foreclosure sales that the Sheriff is to conduct each Wednesday and Thursday afternoon are **troubled assets** that the Secretary has bought through the TARP framework. 12 U.S.C.A. Section 5219

On Wednesday and Thursday at 1:00 pm, the Sheriff is presented with 200-300 individual packets which each contain several sheets of paper. Each individual packet, containing several sheets of paper, is an individual homeowner's almost final disposition of his/her American Dream.

The Sheriff conducts the foreclosure sale of each homeowner's (whose name appears on the sheets) mortgage by reading off the property address, the starting bid and rarely, sells the foreclosed mortgage to a person or company who has no interest in the bank, mortgage company or homeowner. After all of the individual packets have been through the sale process, the homeowners' mortgages are considered foreclosed, by virtue of the Sheriff sale, and are returned to the foreclosing mortgagees, assignees and servicing pools. MCLA Section 600.3216

Note This { It is clear that the Sheriff has absolutely no way of knowing which assets in the usually long list of mortgagees, assignees and servicing pools have been bought by the Treasury Secretary under the TARP Act. The Sheriff does not receive any statement(s) from mortgagees, assignees, servicing pools; employees of mortgagees, assignees, servicing pools; attorney(s) for the mortgagees, assignees, servicing pools; employees or agents of the attorney(s) for the mortgagees, assignees, servicing pools or any other possible representative of the mortgagees, assignees, servicing pools. MCLA Section 600.3204

This Too { The Sheriff opens himself up to liability by foreclosing mortgages, or assets as they are defined in the TARP Act, that have been bought by the Secretary. Under Section 109, the Secretary was ordered to create a plan to mitigate foreclosures through loan modification and restructuring.

Note ALL This ALSO

The potential liability would arise if the Sheriff, in his individual and official capacity as the constitutionally elected Sheriff of Wayne County and Wayne County, a duly constituted governmental corporation, forecloses a mortgage containing "troubled asset(s)", thereby violating a homeowner's right to loan modification, especially where the anticipated recovery on the principal outstanding obligation of the mortgage under the modification is likely to be greater than, on a net present value basis, the anticipated recovery on the principal outstanding obligation of the mortgage through foreclosure. 12 U.S.C.A. Section 5229

In Wayne County, almost all homeowners' facing foreclosure "anticipated recovery" on the principal outstanding obligation of their mortgage under the modification is likely to be greater than, on a net present value basis, the anticipated recovery on the principal outstanding obligation of the mortgage through foreclosure.

NOTE

For all of the foregoing reasons, I opine that the local county Sheriff is preempted from holding mortgage foreclosure sales countywide, effective Wednesday, February 4, 2009.

This LEGAL OPINION of SHERIFF'S LEGAL COUNSEL

OATH OF OFFICE

#406.37

STATE OF MICHIGAN
COUNTY OF WAYNE } ss.

I, WARREN EVANS, do solemnly swear that I will support the constitution of the United States and the constitution of this state, and that I will faithfully discharge the duties of the office of:

WAYNE COUNTY SHERIFF ..... District.....
(If applicable)

term ending JANUARY 1, 2005, according to the best of my ability.

FILED 33 DAYS LATE SEE M.C.L.A 201.37

Subscribed and sworn to before me this

20th day of DECEMBER A.D. 2002

Cathy M. Garrett

CATHY M. GARRETT

WAYNE COUNTY CLERK

Title

Signature

T-127 P.002/002 F-581

STATE OF MICHIGAN
COUNTY OF WAYNE } ss.

I, BENNY N. NAPOLEON, do solemnly swear that I will support the constitution of the United States and the constitution of this state, and that I will faithfully discharge the duties of the office of:

WAYNE COUNTY SHERIFF District.....
(If applicable)

term ending.....DECEMBER 31, 2010....., according to the best of my ability.

Subscribed and sworn to before me this

24th day of JULY A.D. 2009

Cathy M. Garrett
CATHY M. GARRETT

WAYNE COUNTY CLERK
Title

By N. Napoleon
Signature

The Sheriff
HAD (10) TEN DAYS
TO TAKE AND TIMELY
File His OATH OF OFFICE
FROM June 06, 2009

Filed LATE
From June 06, 2009
SEE M.C.L.A
201.3(7)

FILED
CATHY M. GARRETT
WAYNE COUNTY CLERK.
JUL 29 2009
BY Cathy M. Garrett

THE OAKLAND PRESS

Serving Oakland County

News

Lawsuit: Wayne County foreclosures were illegal

Published: Thursday, November 05, 2009

DETROIT (AP) — A lawyer who has filed a proposed class-action lawsuit says tens of thousands of foreclosures in Wayne County are unlawful because sheriffs did not follow state law when they conducted foreclosure auctions.

The suit filed in federal court by Bloomfield Hills attorney Paul Nicoletti seeks to set aside the foreclosures of 46 plaintiffs in Wayne County and potentially hundreds of thousands of others statewide.

The suit claims former Wayne County Sheriff Warren Evans was required by law to sign the sheriff's deeds. But, as in most Michigan counties, the undersheriff signed.

Nicoletti tells The Detroit News it's a "hyper-technical argument, but it's due process."

Evans, now Detroit police chief, and current Wayne County Sheriff Benny Napoleon declined comment.

Comments

The following are comments from the readers. In no way do they represent the view of The Oakland Press or theoaklandpress.com.

na wrote on Nov 5, 2009 8:08 AM:
" If we cancelled half the lawyer licenses
in the country would anyone really notice? "

News

Lawsuit: Wayne County foreclosures were illegal

Thursday, November 5, 2009

DETROIT (AP) — A lawyer who has filed a proposed class-action lawsuit says tens of thousands of foreclosures in Wayne County are unlawful because sheriffs did not follow state law when they conducted foreclosure auctions.

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The suit claims former Wayne County Sheriff Warren Evans was required by law to sign the sheriff's deeds. But, as in most Michigan counties, the undersheriff signed.

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Evans, now Detroit police chief, and current Wayne County Sheriff Benny Napoleon declined comment.

Newsroom [archive 2009] — Note This Date

Sheriff's Newsroom Archive: 2009, 2008, 2007, 2006, 2005, 2004, 2003 | Current News

03/16/09 - Evans says decision to halt foreclosure sales kept 3,500 families in their homes long enough to take advantage of Obama plan.

At least 3,500 Wayne County families were spared from having their homes sold at foreclosure sales long enough to have the opportunity to take advantage of President Obama's Homeowner Affordability and Stability Program (HASP), Sheriff Warren Evans announced today. On February 2nd, Evans announced a stoppage of foreclosure sales in Wayne County and none were held on the scheduled dates of February 4th, 5th, 11th, and 12th, 2009 in anticipation that federal relief was forthcoming. » continue

02/6/09 - Wayne County deputies arrest 3 Saginaw area "Cyber Flashers" in Internet underage sex sting

Wayne County and Saginaw County Sheriff's deputies yesterday arrested three Saginaw County men for allegedly exposing themselves over the Internet to what they believed were underage girls, Sheriff Warren Evans announced today. The three "Cyber Flashers," who range in age from 23 to 38, had been chatting online with undercover deputies with the Wayne County Sheriff's Internet Crime Unit. » continue

02/02/09 - Evans halts sale of foreclosed homes

- Sheriff says move is necessary to ensure homeowners' rights
- Federal bailout act protections preempt State foreclosure law Evans says

Note This!

Today I will be stopping all mortgage foreclosure sales in Wayne County, beginning with the sale that was scheduled for this Wednesday.

I am doing so because its my opinion that recently enacted federal laws provide protections for homeowners facing foreclosure.

To proceed with sales without assuring that homeowners have been able to avail themselves of these protections would put me in a position of violating federal law.

The Troubled Asset Relief Program known as TARP that was approved by Congress last fall requires the Secretary of the Treasury to implement a plan to mitigate foreclosures.


FORECLO
FOR
SAL
00:05
03:00

Pg 72+14

43265

APPOINTMENT OF SPECIAL DEPUTY SHERIFF

TO WHOM THESE PRESENT MAY COME: GREETINGS
By virtue of the power vested in me by the statute, in such case made and provided, I, Daniel Pfannes, Undersheriff of the County of Wayne, do hereby appoint:

RALPH LEGGAT

SPECIAL DEPUTY SHERIFF during the year ending December 31, 2012 to do particular acts and limited to the following, to wit:

(Here set forth specific duties): To act as auctioneer to hold all Sheriff's sales; issue deeds; adjourn Sheriff's sales and perform related work; levy on real estate by virtue of Writs of Execution, Writs of Attachment, Court Orders; record said levies; release said levies; ~~file and endorse~~ Returns of ~~Writs of Execution~~, Attachment, Court Orders and perform related work; advertise real estate for sale.

Note This Signature UNDER Sheriff

DANIEL PFANNES
UNDERSHERIFF OF WAYNE COUNTY

WARREN C. EVANS
SHERIFF OF WAYNE COUNTY

Note Signature of Sheriff Defacto WARREN EVANS

OATH OF SPECIAL DEPUTY SHERIFF

STATE OF MICHIGAN
COUNTY OF WAYNE

I, RALPH LEGGAT, do solemnly swear that I will support the Constitution of the United States, and the Constitution of Michigan, and that I will faithfully discharge the duties of Special Deputy Sheriff in and for the County of Wayne, State of Michigan, to the best of my ability, so help me God.

RALPH LEGGAT
NAME (Print)

SIGNATURE

25382
EMPLOYEE ID#

9890 SELTZER
LIVONIA, MICH. 48150-3252
CITY STATE ZIP

FILED
CATHY M. GARRETT
WAYNE COUNTY CLERK
JAN 26 2009
BY

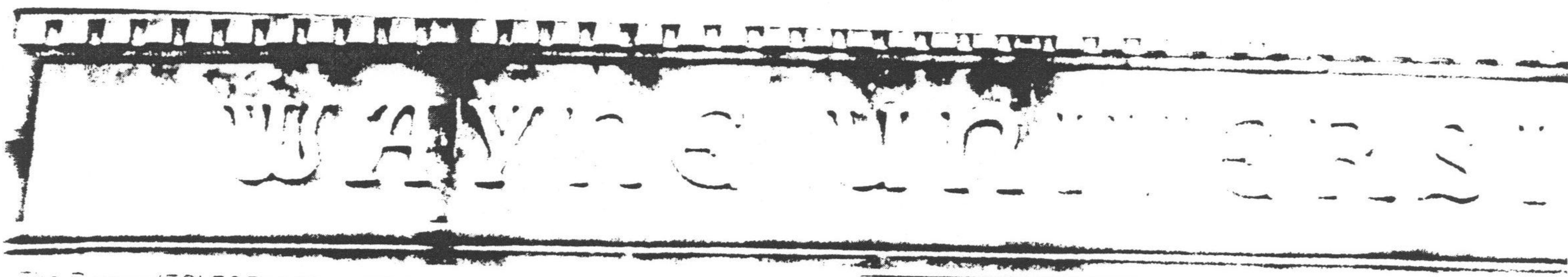
Subscribed and sworn to before me
This 5th of January, A.D., 2009

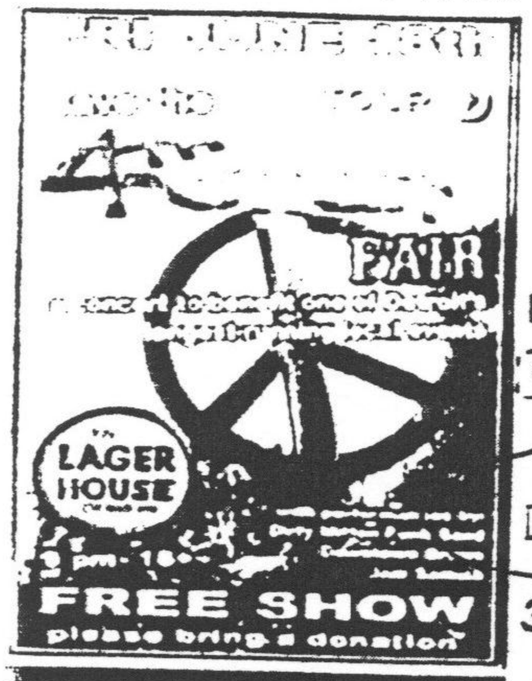
LaKeisha Solomon
Notary Public, Wayne County, Michigan

LaKeisha Solomon
Notary Public, Wayne County, MI
My Commission Expires 09/08/2014

My Commission Expires: 9/8/2014

Form 1-SDA





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CONTACT

July 24th, 2009, 12:26 PM

Note DATE

313WX

Benny Napolean Wayne County Sheriff?

That's the news via Frankie Darcell. Can anyone confirm this?

Last edited by 313WX; July 24th, 2009 at 12:29 PM.

July 24th, 2009, 12:29 PM

Note Date

Danny

Benny Napoleon is one of those post Coleman Young, Post Archer era Detroit law enforcement leader lei fire for not keeping the Detroit Police Dept. in control to any response from violent crimes in the ghettohoc

I will not vote for him.

I want new leadership in Detroit.

July 24th, 2009, 12:29 PM

Detroitnerd

It's "Benny N. Napoleon." You in a hurry?

July 24th, 2009, 12:33 PM

Detroitnerd

Yeah, I'm sick of all the retreads too. We need a bigger broom.

July 24th, 2009, 12:38 PM

With more than 34 years experience in law enforcement, Benny N. Napoleon considers his role as the Sheriff of Wayne County as his most important assignment to date. The Wayne County Sheriff's Office is the second largest law enforcement agency in Michigan, with more than 1,300 officers among its ranks. Its mission is to protect and serve the citizens of Wayne County by serving as a regional law enforcement resource to the county's 43 local police departments.

In addition to providing safe and secure jail bed space for more than 2,600 inmates, the department also provides critical services to all of its communities, including fugitive apprehension, Internet investigations, border enforcement, child rescue, and drug and prostitution enforcement. Many of these programs serve as blueprints for excellence and are mirrored by other jurisdictions.

The Sheriff's goal is to make Wayne County and all of its communities as safe as possible. To that end, Sheriff Napoleon seeks out partnerships whenever possible with other law enforcement agencies and the public to help make that happen.

As the agency moves forward under Sheriff Napoleon's leadership, he hopes not only to maintain those programs functioning at the highest levels, but to enhance additional protocols so that all of the stakeholders served by the Wayne County Sheriff enjoy the highest quality of life possible.

Note DATE 6/18/201

Sheriff of Wayne County

Sheriff

Welcome to the official Website for the Wayne County Sheriff's Office. The purpose of this site is to inform you of the many different ways our dedicated officers are working to keep your community safe, and to provide you some tools to protect yourself and your family.

We also welcome your comments, crime tips and questions to help us better serve you. Our Website is always changing, so come back often to see what's new.

Thanks for stopping by, and stay safe!

Benn

Sheriff's Office NEWS

RECENT PRESS - MEDIA RELEASES - NEWS ARCHIVE

Newsroom Archive: 2009, 2008, 2007, 2006, 2005, 2004, 2003 | More current news

Ph: (
Fx: (

01/19/10 Wayne County Sheriff, Benny Napoleon Sends Help, Donation To Haiti

12/02/09 Wayne County Sheriff's Office Kicks Off "No Child Without A Christmas" Campaign

12/02/09 Wayne County Sheriff Benny Napoleon, MADD Want Motorists To Be Safe For The Holidays

12/02/09 Sheriff Benny N. Napoleon Honored For Efforts In Addressing Mental Health Issues And Incarceration

12/02/09 Wayne County Sheriff's Office Kicks Off "No Child Without A Christmas" Campaign

11/11/09 Wayne County Sheriff Benny Napoleon Busts Scammer Preying On Local Senior

11/02/09 Wayne County Sheriff Benny Napoleon Conducts Successful 3-Day Tether Sweep

10/15/09 Wayne County Office Loses One Of It's Own

08/06/09 Sheriff Benny N. Napoleon Promotes Lieutenants And Sergeants

08/02/09 Wayne County Sheriff's Marine Unit Rescues Two After Boat Capsizes.

07/31/09 Deputies Arrest 28-Year-Old Man Who Exposed Himself, Seeking Sex With A 13-Year-Old Girl.

SE
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& inform

ICH
Internet
Criminal
Access Too

http://www.waynecounty.com/mygovt/sheriff/

Note DATE → 6/18/2010

OF OFFICE

,ATE OF MICHIGAN }
:OUNTY OF WAYNE } ss.

I, BENNY N. NAPOLEON, do solemnly swear that I will support the constitution of th
United States and the constitution of this state, and that I will faithfully discharge the duties of the office of:

WAYNE COUNTY SHERIFF District
(If applicable)

term ending DECEMBER 31, 2010, according to the best of my ability.

Subscribed and sworn to before me this

24th day of JULY A.D. 2009

CATHY M. GARRETT

WAYNE COUNTY CLERK

Title

Note DATE

Signature

Hon. Benny Napoleon
Filed His Oath
Of Office On

1
29 July
+ 24 June
Filed – 53 Days
Late

From His Appointment
on June 06, 2009
PLEASE See M.C.L.A 201.3(7)

FILED
CATHY M. GARRETT
WAYNE COUNTY CLERK.
JUL 29 2009
BY

2009 OCT 13 PM 3:39

FILE DO NOT MAIL

d J. Youngblood
Wayne County Register of Deeds
October 13, 2009 03:39 PM
Liber 48164 Page 783-790
#209345302 SHO FEE: $36 00

275185F01 Loshbough - FC R

SHERIFF'S DEED ON MORTGAGE SALE

This Indenture Made this 30th day of September, A.D. 2009, between, Ralph Leggat, a Deputy Sheriff in and for Wayne County, Michigan, whose address is 1231 Saint Antoine St Detroit, Michigan 48226-2300, party of the first part, and JPMorgan Chase Bank, National Association, as purchaser of the loans and other assets of Washington Mutual Bank, formerly known as Washington Mutual Bank, FA (the "Savings Bank") from the Federal Deposit Insurance Corporation, acting as receiver for the Savings Bank and pursuant to its authority under the Federal Deposit Insurance Act, 12 U.S.C. § 1821(d), whose address is 7255 Baymeadows Way # JAXA2035, Jacksonville, FL 32256-6851, party of the second part (hereinafter called the grantee).

WITNESSETH, That Whereas a certain mortgage made by Peggy-Lee Loshbough, A Single Woman, original mortgagor(s), to Stratford Funding Incorporated, Mortgagee, dated October 21, 2002, and recorded on November 15, 2002 in Liber 37211 on Page 955, and assigned by said Mortgagee to JPMorgan Chase Bank, National Association, as purchaser of the loans and other assets of Washington Mutual Bank, formerly known as Washington Mutual Bank, FA (the "Savings Bank") from the Federal Deposit Insurance Corporation, acting as receiver for the Savings Bank and pursuant to its authority under the Federal Deposit Insurance Act, 12 U.S.C. § 1821(d) as assignee as documented by an assignment dated October 21, 2002 recorded on March 18, 2003 in Liber 37960 on Page 851, in Wayne county records, Michigan and

WHEREAS, said mortgage contained a power of sale which has become operative by reason of a default in the condition of said mortgage, and

WHEREAS, no suit or proceedings at law or in equity have been instituted to recover the debt secured by said mortgage or any part thereof, and

WHEREAS, by virtue of said power of sale, and pursuant to the statute of the State of Michigan in such case made and provided, a notice was duly published and a copy thereof was duly posted in a conspicuous place upon the premises described in said mortgage, that the said premises, or some part of them, would be sold at 1:00 PM on the 16th day of September, A.D. 2009 (sale adjourned from September 16, 2009 to September 30, 2009), at public vendue, that being the place of holding the Circuit Court for Wayne County where the premises are situated and

WHEREAS, pursuant to said notice I did, at on the day last aforesaid, expose for sale at public vendue the said lands and tenements hereinafter described, and on such sale did strike off and sell the said lands and tenements to the grantee for the sum of Sixty-Two Thousand Three Hundred Thirty-Four And 56/100 Dollars ($62,334.56), that being the highest bid therefore and the grantee being the highest bidder, and

WHEREAS, said lands and tenements are situated in the City of Westland, Wayne County, Michigan, more particularly described in exhibit A, attached and commonly known as:
8327 Donna St
Property Tax Parcel ID 56-005-04-0029-000
This property may be located within the vicinity of farmland or a farm operation. Generally, accepted agricultural and management practices, which may generate noise, dust, odors, and other associated conditions, may be used and are protected by the Michigan right to farm act.

Now, this Indenture Witnesseth, That I, the Deputy Sheriff aforesaid, by virtue of and pursuant to the statute in such case made and provided, and in consideration of the sum of money so paid as aforesaid, have granted, conveyed, bargained and sold, and by this deed do grant, convey, bargain and sell unto the grantee, its successors and assigns, forever, all the estate, right, title and interest, which the said Mortgagor(s) had in said land and tenements and every part thereof, on the 21st day of October A.D. 2002, that being the date of said mortgage, or at any time thereafter, to have and to hold the said lands and tenements and every part thereof to the said grantee, its successors and assigns forever, to their sole and only use, benefit and behoof forever, as fully and absolutely as I, the Deputy Sheriff aforesaid, under the authority aforesaid, might, could or ought to sell the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, the date and year first above written.

Note Signature

Ralph Leggat

Deputy Sheriff in and for the County of Wayne

STATE OF MICHIGAN
COUNTY OF WAYNE

On this 30th day of September, A.D. 2009, before me, a Notary Public in and for said County of Wayne came Ralph Leggat, a Deputy Sheriff of said County, known to me to be the individual described in and who executed the above conveyance, and who acknowledged that he executed the same to be his free act and deed as such Deputy Sheriff.

SAMUEL GEORGE
Notary Public: Wayne County
State of Michigan
Notary Public, Wayne County, Michigan
My Commission Expires June 8 2012
My commission expires:
Acting in the county of Wayne

THIS INSTRUMENT IS EXEMPT FROM MICHIGAN TRANSFER TAX UNDER MCLA 207.505(c); MCLA 207.526(v); MCLA 207.505(h)(ii).

Fannie Mae (RC) #1684104399

ORDER

Larry L. Fairchild v Buena Vista Charter Township

Docket # 190810

L.C. # 95-7000 CZ

Michael J. Kelly
Presiding Judge

Michael R. Smolenski
William J. Giovan

Judges

Pursuant to MCR 7.214(E) and 7.216(A)(7), the Court dispenses with oral argument, REVERSES the Saginaw Circuit Court's order for summary disposition in this cause, and REMANDS to the Saginaw Circuit Court for further proceedings consistent with this order. Michigan jurisprudence has never recognized immunity on behalf of a city, village, township, county or any administrative division thereof from liability for trespass on private property, whether the trespass be of long or short duration. *Herro v Chippewa County Road Commissioners*, 368 Mich 263, 272-273 (1962). The Fourth Amendment authorizes a person in plaintiff's position, as proprietor of a business, other than one pervasively regulated, such as trafficking in alcoholic liquors, *Colonnade Catering Corp v United States*, 397 US 72; 90 S Ct 774; 25 L Ed 2d 60 (1970); or firearms, *United States v Biswell*, 406 US 311; 92 S Ct 1593; 32 L Ed 2d 87 (1972), to bar governmental agents, including inspectors carrying out police power functions to protect public health and safety, from his property, *Camara v Municipal Court of the City and County of San Francisco*, 387 US 523; 87 S Ct 1727; 18 L Ed 2d 930 (1967); *See v City of Seattle*, 387 US 541; 87 S Ct 1737; 18 L Ed 2d 943 (1967), in the absence of either a properly issued administrative search warrant or a search warrant otherwise issued on probable cause. *Marshall v Barlow's, Inc*, 436 US 307; 98 S Ct 1816; 56 L Ed 2d 305 (1978); *Donovan v Dewey*, 452 US 594; 101 S Ct 2534; 69 L Ed 2d 262 (1981). Common law and constitutional principles of governmental or sovereign immunity have never permitted government agents to commit trespasses in violation of property rights. *Little v Barreme*, 2 Cranch (6 US) 170; 2 L Ed 243 (1804); *Wise v Withers*, 3 Cranch (7 US) 331; 2 L Ed 457 (1806); *Osborn v Bank of United States*, 9 Wheat (22 US) 738; 6 L Ed 204 (1824); *Mitchell v Harmony*, 13 How (54 US) 115; 14 L Ed 75 (1852); *Bates v Clark*, 95 US 204; 24 L Ed 471 (1877). Under the Federal Tort Claims Act similarly, federal law enforcement officers who generally enjoy absolute immunity from tort liability may nonetheless be held liable for damages for the tort of trespass. *Black v Sheraton Corp of America*, 184 US App DC 46, 564 F2d 531, 541 (1977). Accordingly, plaintiff's complaint facially pleads a viable cause of action for trespass as a constitutional tort. *Smith v Department of Public Health*, 428 Mich 540 (1987).

This Court retains no further jurisdiction.

STATE OF MICHIGAN COURT OF APPEALS

A true copy entered and certified by Ella Williams, Chief Clerk, on

DEC 12 1991
Date

Ella Williams
Chief Clerk

YAHOO!® MAIL Classic

Re: 440.3308 Establishing validity of signature Sunday, November 14, 2010 9:52 PM

From: "Mastertaxman6@aol.com" <Mastertaxman6@aol.com>

To: investormil@yahoo.com

Section 440.3308

Note:

This →

UNIFORM COMMERCIAL CODE (EXCERPT)
Act 174 of 1962

440.3308 Establishing validity of signature; burden; right to payment subject to defense or claim in recoupment; holder in due course not subject to defense or claim.

Sec. 3308.

(1) In an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings. ***If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature.*** If an action to enforce the instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person under section 3402(1).

(2) If the validity of signatures is admitted or proved and there is compliance with subsection (1), a plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to enforce the instrument under section 3301, unless the defendant proves a defense or claim in recoupment. If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim, except to the extent the plaintiff proves that the plaintiff has rights of a holder in due course which are not subject to the defense or claim.

History: Add. 1993, Act 130, Eff. Sept. 30, 1993

Note All This

PART 2

NEGOTIATION, TRANSFER, AND INDORSEMENT

SECTION 3–201. NEGOTIATION.

(a) "Negotiation" means a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder.

(b) Except for negotiation by a remitter, if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its indorsement by the holder. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone.

SECTION 3–202. NEGOTIATION SUBJECT TO RESCISSION.

(a) Negotiation is effective even if obtained (i) from an infant, a corporation exceeding its powers, or a person without capacity, (ii) by fraud, duress, or mistake, or (iii) in breach of duty or as part of an illegal transaction.

(b) To the extent permitted by other law, negotiation may be rescinded or may be subject to other remedies, but those remedies may not be asserted against a subsequent holder in due course or a person paying the instrument in good faith and without knowledge of facts that are a basis for rescission or other remedy.

SECTION 3–203. TRANSFER OF INSTRUMENT; RIGHTS ACQUIRED BY TRANSFER.

(a) An instrument is transferred when it is delivered by a person other than its issuer for

UCC: uniform commercial code

U.C.C. - ARTICLE 3 - NEGOTIABLE INSTRUMENTS
..PART 3. ENFORCEMENT OF INSTRUMENTS

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§ 3-302. HOLDER IN DUE COURSE.

Note ALL OF This

- (a) Subject to subsection (c) and Section 3-106(d), "**holder in due course**" means the holder of an instrument if:
  - (1) the instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and
  - (2) the holder took the instrument (i) for value, (ii) in good faith, (iii) without notice that the instrument is overdue or has been dishonored or that there is an uncured default with respect to payment of another instrument issued as part of the same series, (iv) without notice that the instrument contains an unauthorized signature or has been altered, (v) without notice of any claim to the instrument described in Section 3-306, and (vi) without notice that any party has a defense or claim in recoupment described in Section 3-305(a).
- (b) Notice of discharge of a party, other than discharge in an insolvency proceeding, is not notice of a defense under subsection (a), but discharge is effective against a person who became a holder in due course with notice of the discharge. Public filing or recording of a document does not of itself constitute notice of a defense, claim in recoupment, or claim to the instrument.
- (c) Except to the extent a transferor or predecessor in interest has rights as a holder in due course, a person does not acquire rights of a holder in due course of an instrument taken (i) by legal process or by purchase in an execution, bankruptcy, or creditor's sale or similar proceeding, (ii) by purchase as part of a bulk transaction not in ordinary course of business of the transferor, or (iii) as the successor in interest to an estate or other organization.
- (d) If, under Section 3-303(a)(1), the promise of performance that is the consideration for an instrument has been partially performed, the holder may assert rights as a holder in due course of the instrument only to the fraction of the amount payable under the instrument equal to the value of the partial performance divided by the value of the promised performance.
- (e) If (i) the person entitled to enforce an instrument has only a security interest in the instrument and (ii) the person obliged to pay the instrument has a defense, claim in recoupment, or claim to the instrument that may be asserted against the person who granted the security interest, the person entitled to enforce the instrument may assert rights as a holder in due course only to an amount payable under the instrument which, at the time of enforcement of the instrument, does not exceed the amount of the unpaid obligation secured.
- (f) To be effective, notice must be received at a time and in a manner that gives a reasonable opportunity to act on it.
- (g) This section is subject to any law limiting status as a holder in due course in particular classes of transactions.

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UCC: uniform commercial code

U.C.C. - ARTICLE 3 - NEGOTIABLE INSTRUMENTS
..PART 4. LIABILITY OF PARTIES

Who Can Sign The Document & How

§ 3-405. EMPLOYER'S RESPONSIBILITY FOR FRAUDULENT INDORSEMENT BY EMPLOYEE.

- (a) In this section:
  - (1) "**Employee**" includes an independent contractor and employee of an independent contractor retained by the employer.
  - (2) "**Fraudulent indorsement**" means (i) in the case of an instrument payable to the employer, a forged indorsement purporting to be that of the employer, or (ii) in the case of an instrument with respect to which the employer is the issuer, a forged indorsement purporting to be that of the person identified as payee.
  - (3) "**Responsibility**" with respect to instruments means authority (i) to sign or indorse instruments on behalf of the employer, (ii) to process instruments received by the employer for bookkeeping purposes, for deposit to an account, or for other disposition, (iii) to prepare or process instruments for issue in the name of the employer, (iv) to supply information determining the names or addresses of payees of instruments to be issued in the name of the employer, (v) to control the disposition of instruments to be issued in the name of the employer, or (vi) to act otherwise with respect to instruments in a responsible capacity. "Responsibility" does not include authority that merely allows an employee to have access to instruments or blank or incomplete instrument forms that are being stored or transported or are part of incoming or outgoing mail, or similar access.
- (b) For the purpose of determining the rights and liabilities of a person who, in good faith, pays an instrument or takes it for value or for collection, if an employer entrusted an employee with responsibility with respect to the instrument and the employee or a person acting in concert with the employee makes a fraudulent indorsement of the instrument, the indorsement is effective as the indorsement of the person to whom the instrument is payable if it is made in the name of that person. If the person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from the fraud, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.
- (c) Under subsection (b), an indorsement is made in the name of the person to whom an instrument is payable if (i) it is made in a name substantially similar to the name of that person or (ii) the instrument, whether or not indorsed, is deposited in a depositary bank to an account in a name substantially similar to the name of that person.

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PLEASE Note: (10) TEN DAY Deadline FOR TIMELY FILING OATH OF OFFICE

THE RULES ON OATHS OF OFFICE REQUIREMENTS

FAILURE IN ANY WAY TO FOLLOW THESE RULES IS AN AUTOMATIC VACATING OF OFFICE BY THE PARTY SO VIOLATING THESE RULES.

MICHIGAN COMPILED LAWS ANNOTATED
CHAPTER 15. PUBLIC OFFICERS AND EMPLOYEES
CONSTITUTIONAL OATH OF OFFICE

Current through P.A. 1995, Nos. 1to 3, 5 to 8, 10 to 24, 26, 28 to 58, and 61 to 100

15.151. Employees and persons in service of state to take constitutional oath of office

Sec. 1. **All persons now employed, or who may be employed by the state of Michigan, or any governmental agency thereof, and all other persons in the service of the state or any governmental agency, shall, as a condition of their employment, take and subscribe to the oath or affirmation required of members of the legislature and other public officers** by section 2 of article 16 of the constitution of 1908 of the state of Michigan. [FN1]

[FN1] See, now, Const. Art. 11, Sec. 1.

M.C.L.A. 49.33

MICHIGAN COMPILED LAWS ANNOTATED
CHAPTER 49. PROSECUTING ATTORNEYS
ASSISTANTS, CLERKS, AND INVESTIGATORS

Current through P.A. 1995, Nos. 1to 3, 5 to 8, 10 to 24, 26, 28 to 58, and 61 to 100

49.33. Statement of appointment, filing

Sec. 3. **The prosecuting attorney shall, within 10 days** after entering on the execution of the duties of his office, **file in the office of the county clerk** a statement in writing of his appointments, designating 1 assistant prosecuting attorney as chief assistant prosecuting attorney and designating all other assistant prosecuting attorneys in the order in which they shall rank in discharging the functions and performing the duties of the office of prosecuting attorney.

M.C.L.A. 49.42

MICHIGAN COMPILED LAWS ANNOTATED
CHAPTER 49. PROSECUTING ATTORNEYS
ASSISTANT PROSECUTING ATTORNEYS

Current through P.A. 1995, Nos. 1to 3, 5 to 8, 10 to 24, 26,
28 to 58, and 61 to 100

49.42. Assistant prosecuting attorney; term, duties, oath, compensation

Sec. 2. **Any** such assistant prosecuting attorney shall hold his office during the pleasure of the prosecuting attorney appointing him, perform any and all duties pertaining to the office of prosecuting attorney at such time or times as he may be required so to do by the prosecuting attorney and during the absence or disability from any cause of the prosecuting attorney, but he shall be subject to all the legal disqualifications and disabilities of the prosecuting attorney, **and shall before entering upon the duties of his office take and subscribe the oath of office prescribed by the constitution of this state and file the same with the county clerk of his county.** The compensation of any such assistant prosecuting attorney shall be paid by the prosecuting attorney appointing him.

M.C.L.A. 49.52

MICHIGAN COMPILED LAWS ANNOTATED
CHAPTER 49. PROSECUTING ATTORNEYS
SECOND ASSISTANT PROSECUTING ATTORNEYS

Current through P.A. 1995, Nos. 1to 3, 5 to 8, 10 to 24, 26,
28 to 58, and 61 to 100

49.52. Second assistant prosecuting attorneys; term, duties, oath, compensation

Sec. 2. **Any** such assistant prosecuting attorney **shall hold his office** during the pleasure of the prosecuting attorney appointing him, perform any and all duties pertaining to the office of prosecuting attorney at such time or times as he may be required so to do by the prosecuting attorney and during the absence or disability from any cause of the prosecuting attorney, but he shall be subject to all the legal disqualifications and disabilities of the prosecuting attorney, **and shall before entering upon the duties of his office, take and subscribe to oath of office prescribed by the constitution of this state and file the same with the county clerk of his county.** Any such assistant prosecuting attorney shall be allowed by the county for his services such

reasonable compensation as the board of supervisors shall determine.

M.C.L.A. 85.10

MICHIGAN COMPILED LAWS ANNOTATED
CHAPTERS 81 TO 113. FOURTH CLASS CITIES
FOURTH CLASS CITY ACT
CHAPTER V. OFFICERS
QUALIFICATIONS, OATH AND BOND OF OFFICE

Current through P.A. 1995, Nos. 1to 3, 5 to 8, 10 to 24, 26, 28 to 58, and 61 to 100

85.10. Oath of office

Sec. 10. **All officers elected or appointed in the city, within 10 days** after receiving notice of election or appointment, **shall take and subscribe the oath of office prescribed by the state constitution of 1963 and file the oath with the city clerk**.

M.C.L.A. 85.11

MICHIGAN COMPILED LAWS ANNOTATED
CHAPTERS 81 TO 113. FOURTH CLASS CITIES
FOURTH CLASS CITY ACT
CHAPTER V. OFFICERS
QUALIFICATIONS, OATH AND BOND OF OFFICE

Current through P.A. 1995, Nos. 1to 3, 5 to 8, 10 to 24, 26, 28 to 58, and 61 to 100

85.11. Bond or security

Sec. 11. **Each officer** elected or appointed in the city, **before entering upon the duties of his or her office and within the time prescribed for filing the official oath, shall file with the city clerk the bond or security required by law, ordinance, or requirement of the council with sureties approved by the council, for the due performance of the duties of that person's office. The bond or security of the clerk shall be deposited with the city treasurer.**

M.C.L.A. 85.16

M.C.L.A. 85.16
MICHIGAN COMPILED LAWS ANNOTATED
CHAPTERS 81 TO 113. FOURTH CLASS CITIES
FOURTH CLASS CITY ACT
CHAPTER V. OFFICERS
VACANCIES IN OFFICE

Current through P.A. 1995, Nos. 1to 3, 5 to 8, 10 to 24, 26,
28 to 58, and 61 to 100
85.16**. Failure to file oath or bond**

Sec. 16. **If any person elected or appointed to office shall fail to take and file the oath of office, or shall fail to give the bond or security required for the due performance of the duties of his office, within the time herein limited therefore, the council may declare the office vacant,** unless previous thereto he shall file the oath and give the requisite bond or security.

M.C.L.A. 168.467j
MICHIGAN COMPILED LAWS ANNOTATED
CHAPTER 168. MICHIGAN ELECTION LAW
MICHIGAN ELECTION LAW
CHAPTER XXIA. JUDGES OF THE DISTRICT COURT
Current through P.A. 1995, Nos. 1to 3, 5 to 8, 10 to 24, 26,
28 to 58, and 61 to 100

168.467j. **Oath of office**

Sec. 467j. **Every person** elected to the office of judge of the district court, before entering upon the duties of his office, **shall take and subscribe to the oath as provided in section 1 of article 11 of the state constitution, and file the same with the secretary of state and a copy with each county clerk in his district.**

TAKE SPECIAL NOTE OF THE FOLLOWING

M.C.L.A. 201.3
MICHIGAN COMPILED LAWS ANNOTATED
CHAPTER 201. **VACANCIES IN OFFICE**
RESIGNATIONS, VACANCIES, AND REMOVALS VACANCIES
Current through P.A. 1995, Nos. 1to 3, 5 to 8, 10 to 24, 26,
28 to 58, and 61 to 100

201.3. **Vacancies; creation**

M.C.L. A 201.3

→ Sec. 3. **Every office shall become vacant, on the happening of any of the following events, before the expiration of the term of such office:**

1. The death of the incumbent;

2. His resignation;

3. His removal from office;

4. His ceasing to be an inhabitant of this state; or, if the office be local, of the district, county, township, city, or village, for which he shall have been appointed, or within which the duties of his office are required to be discharged;

5. His conviction of any infamous crime, or of any offense involving a violation of his oath of office;

Note: 6. The decision of a competent tribunal, declaring void his appointment, or,

THIS → 7. **His refusal or neglect to take his oath of office, or to give, or renew any official bond, or to deposit such oath, or bond, in the manner and within the time prescribed by law.**

IN SUMMATION YOU HONOR

Clearly your Honor one could easily and fairly come to the simple Lawful conclusion that if a PARTY, CANDIDATE, OR ELECTED, OR APPOINTED OFFICIAL truly desired to take an Official Office and actually hold that Official Office Lawfully he or she would certainly timely follow the Law and timely file within the (10) ten day requirement the appropriate OATH OF OFFICE AND OR SURETY BONDS and that failing that certainly the Record would be clear that he or she voluntarily vacated that Office for failure to timely file or post that OATH OF OFFICE AND OR SURETY BOND. It is about specific performance and clearly your Honor ALL OFFICE HOLDERS as a condition of employment are REQUIRED by statute, to file the appropriate OATH OF OFFICE and post the appropriate SURETY BONDS or they automatically VACATE THEIR OFFICE and having so vacated their OFFICE they would have no power or authority to speak or act as a REAL PARTY IN INTEREST WITH LAWFUL " STANDING " TO ACT OR SUE.

FEDERAL BANKING Code

[Code of Federal Regulations]
[Title 12, Volume 3, Parts 220 to 299]
[Revised as of January 1, 2001]
From the U.S. Government Printing Office via GPO Access
[**CITE: 12CFR226.23**]

[Page 248-251]

TITLE 12--BANKS AND BANKING

CHAPTER II--FEDERAL RESERVE SYSTEM

PART 226--TRUTH IN LENDING (REGULATION Z)--Table of Contents

Subpart C--Closed-End Credit

Sec. 226.23 Right of rescission.

PLEASE Note: This Et Sequence

(a) Consumer's right to rescind. (1) In a credit transaction in which a security interest is or will be retained or acquired in a consumer's principal dwelling, each consumer whose ownership interest is or will be subject to the security interest shall have the right to
rescind the transaction, except for transactions described in paragraph
(f) of this section.\47\

\47\ For purposes of this section, the addition to an existing obligation of a security interest in a consumer's principal dwelling is a transaction. The right of rescission applies only to the addition of the security interest and not the existing obligation. The creditor shall deliver the notice required by paragraph (b) of this section but need not deliver new material disclosures. Delivery of the required notice shall begin the rescission period.

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(2) To exercise the right to rescind, the consumer shall notify the creditor of the rescission by mail, telegram or other means of written communication. Notice is considered given when mailed, when filed for
telegraphic transmission or, if sent by other means, when delivered to
the creditor's designated place of business.
(3) The consumer may exercise the right to rescind until midnight of
the third business day following consummation, delivery of the notice

required by paragraph (b) of this section, or delivery of all material disclosures,\48\ whichever occurs last. If the required notice or material disclosures

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are not delivered, the right to rescind shall expire 3 years after consummation, upon transfer of all of the consumer's interest in the property, or upon sale of the property, whichever occurs first. In the case of certain administrative proceedings, the rescission period shall be extended in accordance with section 125(f) of the Act.

\48\ The term ``material disclosures'' means the required disclosures of the annual percentage rate, the finance charge, the amount financed, the total payments, the payment schedule, and the disclosures and limitations referred to in Sec. 226.32 (c) and (d).

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(4) When more than one consumer in a transaction has the right to rescind, the exercise of the right by one consumer shall be effective as to all consumers.

(b)(1) Notice of right to rescind. In a transaction subject to rescission, a creditor shall deliver 2 copies of the notice of the right to rescind to each consumer entitled to rescind. The notice shall be on a separate document that identifies the transaction and shall clearly and conspicuously disclose the following:

(i) The retention or acquisition of a security interest in the consumer's principal dwelling.

(ii) The consumer's right to rescind the transaction.

(iii) How to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's place of business.

(iv) The effects of rescission, as described in paragraph (d) of this section.

(v) The date the rescission period expires.

(2) Proper form of notice. To satisfy the disclosure requirements of paragraph (b)(1) of this section, the creditor shall provide the appropriate model form in Appendix H of this part or a substantially similar notice.

(c) Delay of creditor's performance. Unless a consumer waives the right of rescission under paragraph (e) of this section, no money shall be disbursed other than in escrow, no services shall be performed and no materials delivered until the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded.

(d) Effects of rescission. (1) When a consumer rescinds a transaction, the security interest giving rise to the right of rescission becomes void and the consumer shall not be liable for any amount, including any finance charge.

(2) Within 20 calendar days after receipt of a notice of rescission, the creditor shall return any money or property that has been given to anyone in connection with the transaction and shall take any action necessary to reflect the termination of the security interest.

(3) If the creditor has delivered any money or property, the

consumer may retain possession until the creditor has met its obligation
under paragraph (d)(2) of this section. When the creditor has complied
with that paragraph, the consumer shall tender the money or property to the creditor or, where the latter would be impracticable or inequitable,
tender its reasonable value. At the consumer's option, tender of property may be made at the location of the property or at the consumer's residence. Tender of money must be made at the creditor's
designated place of business. If the creditor does not take possession

of the money or property within 20 calendar days after the consumer's
tender, the consumer may keep it without further obligation.

(4) The procedures outlined in paragraphs (d) (2) and (3) of this section may be modified by court order.

(e) Consumer's waiver of right to rescind. (1) The consumer may modify or waive the right to rescind if the consumer determines that the extension of credit is needed to meet a bona fide personal financial
emergency. To modify or waive the right, the consumer shall give the

creditor a dated written statement that describes the emergency, specifically modifies or waives the right to rescind, and bears the signature of all the consumers entitled to rescind. Printed forms for

this purpose are prohibited, except as provided in paragraph (e)(2) of

this section.

(2) The need of the consumer to obtain funds immediately shall be

regarded as a bona fide personal financial emergency provided that the
dwelling securing the extension of credit is located in an area declared
during June through September 1993, pursuant to 42 U.S.C. 5170, to be a major disaster area because of severe storms and flooding in the

Midwest.\48a\ In this instance,

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creditors may use printed forms for the consumer to waive the right to
rescind. This exemption to paragraph (e)(1) of this section shall expire
one year from the date an area was declared a major disaster.

\48a\ A list of the affected areas will be maintained by the Board.

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(3) The consumer's need to obtain funds immediately shall be regarded as a bona fide personal financial emergency provided that the

dwelling securing the extension of credit is located in an area declared
during June through September 1994 to be a major disaster area, pursuant to 42 U.S.C. 5170, because of severe storms and flooding in the South.\48b\ In this instance, creditors may use printed forms for the consumer to waive the right to rescind. This exemption to paragraph (e)(1) of this section shall expire one year from the date an area was declared a major disaster.

\48b\ A list of the affected areas will be maintained and published by the Board. Such areas now include parts of Alabama, Florida, and Georgia.

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(4) The consumer's need to obtain funds immediately shall be regarded as a bona fide personal financial emergency provided that the
dwelling securing the extension of credit is located in an area declared
during October 1994 to be a major disaster area, pursuant to 42 U.S.C.
5170, because of severe storms and flooding in Texas.\48c\ In this instance, creditors may use printed forms for the consumer to waive the right to rescind. This exemption to paragraph (e)(1) of this section
shall expire one year from the date an area was declared a major disaster.

\48c\ A list of the affected areas will be maintained and published by the Board. Such areas now include the following counties in Texas:

Angelina, Austin, Bastrop, Brazos, Brazoria, Burleson, Chambers, Fayette, Fort Bend, Galveston, Grimes, Hardin, Harris, Houston, Jackson, Jasper, Jefferson, Lee, Liberty, Madison, Matagorda, Montgomery, Nacagdoches, Orange, Polk, San Augustine, San Jacinto, Shelby, Trinity, Victoria, Washington, Waller, Walker, and Wharton.

(f) Exempt transactions. The right to rescind does not apply to the following:

(1) A residential mortgage transaction.

(2) A refinancing or consolidation by the same creditor of an extension of credit already secured by the consumer's principal dwelling. The right of rescission shall apply, however, to the extent the new amount financed exceeds the unpaid principal balance, any earned
unpaid finance charge on the existing debt, and amounts attributed solely to the costs of the refinancing or consolidation.

(3) A transaction in which a state agency is a creditor.

(4) An advance, other than an initial advance, in a series of advances or in a series of single-payment obligations that is treated as
a single transaction under Sec. 226.17(c)(6), if the notice required by

paragraph (b) of this section and all material disclosures have been given to the consumer.

(5) A renewal of optional insurance premiums that is not considered
a refinancing under Sec. 226.20(a)(5).

(g) Tolerances for accuracy--(1) One-half of 1 percent tolerance. Except as provided in paragraphs (g)(2) and (h)(2) of this section, the
finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be
considered accurate for purposes of this section if the disclosed finance charge:

(i) is understated by no more than \1/2\ of 1 percent of the face amount of the note or $100, whichever is greater; or

(ii) is greater than the amount required to be disclosed.

(2) One percent tolerance. In a refinancing of a residential mortgage transaction with a new creditor (other than a transaction covered by Sec. 226.32), if there is no new advance and no consolidation of existing loans, the finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge:

(i) is understated by no more than 1 percent of the face amount of

the note or $100, whichever is greater; or

(ii) is greater than the amount required to be disclosed.

(h) Special rules for foreclosures--(1) Right to rescind. After the initiation of foreclosure on the consumer's principal dwelling that secures the credit obligation, the consumer shall have the right to rescind the transaction if:

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(i) A mortgage broker fee that should have been included in the finance charge was not included; or

(ii) The creditor did not provide the properly completed appropriate
model form in Appendix H of this part, or a substantially similar notice
of rescission.

(2) Tolerance for disclosures. After the initiation of foreclosure on the consumer's principal dwelling that secures the credit obligation,
the finance charge and other disclosures affected by the finance charge
(such as the amount financed and the annual percentage rate) shall be
considered accurate for purposes of this section if the disclosed finance charge:

(i) is understated by no more than $35; or

(ii) is greater than the amount required to be disclosed.

[Reg. Z, 46 FR 20892, Apr. 7, 1981, as amended at 51 FR 45299, Dec. 18, 1986; 58 FR 40583, July 29, 1993; 59 FR 40204, Aug. 5,

1994; 59 FR 63715, Dec. 9, 1994; 60 FR 15471, Mar. 24, 1995; 61 FR 49247, Sept. 19, 1996]

PLEASE Note IN NEW York State Time for Filing OATH of OFFICE IS (30) DAYS, But IN Michigan IT IS (10) TEN DAYS No EXCUSES

New York State Bar Journal
March/April 1997
See below for footnotes

Public Officers, Beware! No Excuses Accepted

By Carolyn H. Mann

Vetere v. Ponce, (1) emanating from the jurisdiction of the Town/Village of Harrison, has recently cast significant public opinion on § 30, Public Officers Law. (2) Although surrounded by political mischief, the case ultimately concerns the perceived right of a duly elected public official to retain his elected post, even though not in strict compliance with a qualifying section of Public Officers Law. The New York Law Journal (3) has headlined its piece on this case (and its most curious sequence of political events) with the words, "Technical Omission Costs Official His Post." We question here whether non-compliance with this statute is properly characterized as a "technical" omission. We submit that the failure to timely file an oath of office is an important and justifiable disqualification for holding public office. Those who are hurt by the consequences of failure to strictly comply, must resignedly accept their fate because, as we intend to show, the purpose of the statute is to secure a trust rather than to punish the careless.

No Exceptions!

Briefly, § 30(1)(h) obligates a public official, whether elected or appointed, to file an oath of office, within 30 days of the commencement or notification of his term. The New York Courts have heard several cases pleading relief from a direct reading of this section, yet all pleas have been to no avail. In each and every case, the courts have read the clear and undisputed language of the statute finding no latitude to permit any exceptions. This piece brings to light the cases of the various officeholders whose positions were properly declared vacant by operation of law for non-compliance with the mandate to timely file an oath of office. We will probe why this law, with its seemingly harsh results, is set so firmly into New York Law and whether such law and its consequences should continue undisturbed.

Let us first examine the pleas of the various petitioners asking that their particular set of circumstances be judged worthy of exception when the statute clearly leaves room for none.

In 1913, in People v. Keator, (4) the relator filed his oath 17days after commencement of his duties and in spite of the fact that the relator received the highest number of votes, the Board passed are solution reciting the existence of a vacancy and properly proceeded to fill the vacancy by appointing another individual. The relators pleaded relief from the Board's action appointing someone other than himself, the duly elected official. The Court concluded:

Taking the constitutional oath of office being a condition precedent to relators being entitled to enter upon the duties of the office, and hence to his right to maintain an action to oust defendant and to recover possession of the office, we conclude that the relators is not entitled to succeed in this action... It would be unfortunate, if the refusal or neglect of a person elected to such office, to qualify, as required by the Constitution of the state, could deprive a town of such an officer, as the position is one of importance, and particularly so in certain contingencies.

No exceptions!

In the Matter of Comins v. County of Delaware, (5) a public officer entered upon his duties and performed them for some time only to find his position declared vacant. He pleaded before the court that his removal must be annulled for surely his service for such an extended period surely conferred rights of legitimacy to his claim to office. The court disagreed, repeated the clear words of § 30and continued:

The fact that the Board did not earlier move to dismiss petitioner, does not, in our view, constitute an appointment of petitioner to his position. When a person appointed to office fails to timely file his oath of office, neither notice nor judicial procedure is necessary, the office is automatically vacant and may be filled by the proper appointive power. Consequently,... no hearing on charges was required in order to dismiss him from office.

No exceptions!

Perhaps the circumstances set forth in McDonough v. Murphy (6)would lead one to expect the court to annul the declaration of a vacancy. Here, two appointed members of the College Board entered upon their official duties and subsequently were officially notified of the appointments. Both filed the oath within 30 days of that official notification, but the Court allowed the vacancy to stand, stating:

> . . . when by one's own actions it is clear that a person knows of his appointment, he should not be allowed to wait indefinitely before filing an oath of office. This interpretation is mandated by the necessity to file an oath of office, which is intended to be part of the requirements making an officer fully qualified to carry out the duties of his office. . . Thus, once plaintiffs have taken actions as official members of the board, as has been done here, they cannot be heard to claim that they had no notice of their appointments, for without a doubt the contrary is true. [Emphasis added.]

No exceptions!

Neither is ignorance of the law an excuse for non-compliance with the requirement for a timely filing, as the Court declared in Boisvert v. County of Ontario, (7) where petitioner pleaded he was unaware of § 30 Public Officers Law. The court ruled:

The obligation imposed by the Public Officers Law statute is personal to plaintiff, it is an act he is required to do and the office became vacant by the mere failure to file the oath, whether or not the defendants knew or were chargeable with notice that plaintiff had failed to file his oath, and they are not required to make any declaration or give any notice. On his default in filing his official oath "the appointment was vitiated and the office * * * be came vacant" [citing Ginsberg v. City of Long Beach, 286 N.Y. 400, 36N.E.2d 637; and also People ex rel. Walton v. Hicks, infra].

No exceptions!

That the statute leads to an unambiguous reading is probably nowhere better stated than in Walton v. Hicks, (8) where the Court ruled:

This statute is emphatic and unequivocal. It does not seem possible that it can be misunderstood. In case a person appointed to office neglects to file his official oath within 15 [now 30] days after notice

of appointment or within 15 [now 30] days after the commencement of the term of office, the office becomes vacant ipso facto. That is all there is to it. No judicial procedure is necessary; no notice is necessary; nothing is necessary. The office is vacant, as much so as though the appointee were dead; there is no incumbent, and the vacancy may be filled by the proper appointive power.

Certainly, no further explanations of § 30 were necessary. Yet, in 1990 in response to a request, the State Board of Equalization and Assessment (9) clarified the "emphatic and unequivocal" words of the statute:

Both the Attorney General (1976, Op. Atty. Gen. (Inf.) 336) and the State Comptroller (10 Op. State Compt. 332) have issued opinions that the failure of a public officer to file an oath is not correctable, because the statute specifically creates the vacancy without providing a remedy. The provisions of Public Officers Law§ 30 creates a vacancy which the appointing authority(e.g., town board, county executive, county legislature) may fill at any time (Public Officers Law, § 38).

The appointive assessor or county director who fails to file the oath of office within 30 days is in the same position as any de facto officer; his or her actions are valid, but employment is subject to immediate termination (Williamson v. Fermaille, 31 A.D. 438, 298N.Y.S. 2d 557 (4th Dept. 1969), aff'd 26 N.Y. 2d 731, 257 N.E. 2d285, 309 N.Y.S. 2d 35 (1970); Vescio v. City Manager, City of Yonkers, 69 Misc. 2d 68, 389 N.Y.S. 2d 357 (Sup. Ct. Westchester Co.1972), aff'd 41 A.D. 2d 833, 342 N.Y.S. 2d 376 (2d Dept. 1973); 1979,Op. Atty. Gen. 198). Although the failure to file the oath cannot be remedied, the Attorney General has concluded that there is no bar to the appointment of the same individual to the same office (1978, Op. Atty. Gen. (Inf.) 833). Presumably, such reappointed official would be sure to timely file the oath the second time.

It is important to note that nowhere in the opinion is any mention or reference made to any exceptions to strict compliance with §30; clearly the legislature intended none.

The administrative explanation of § 30 has been exhaustive and the reiteration of the statute's words frequent. Nevertheless, additional cases managed to find their way into New York courtrooms. In Lombino v. Town Board of the Town of Rye (10) petitioner claimed compliance with § 30 pleading his filing was only one day late. The Court was unimpressed and the Appellate Division stated:

The Supreme Court denied the defendants' motion for summary judgment on the ground that there is a factual issue of whether the plaintiff filed his oath of office on January 3, 1991. However, contrary to plaintiff's contention, even if he filed his oath of office on January 3, 1991, the filing was still untimely. Public Officers Law § 30 provides that an appointive office shall become vacant for failure to file an official oath "within thirty days after [the] [sic] appointment, or within thirty days after the commencement of such term." Here, the plaintiff was notified of his appointment as Assessor in November 1990, and began working on December 3, 1990. Thus, even if he filed his oath of office on January 3, 1991, the filing was more than 30 days after the notification and commencement of his term. Thus, the Town Board properly declared the Office of Assessor vacant.

No exceptions!

Proper Judicial Role: Declaring What the Law is, Not What it Should Be

In the most recent case, Vetere v. Ponce, supra, the case which catapulted § 30 onto a red-hot front burner, petitioner sought to be excused from strict compliance with the statute by arguing first, that petitioner was not notified by the Town/Village Clerk to timely file, as required by Law, (11) claiming, in effect, ignorance of a legal duty and second, that petitioner was justifiably distracted from his duty

because of the concurrent illness and death of his spouse.

Politics takes center stage here. As set forth in the decision, the Town/Village Clerk of Harrison arranged to have all the Republican elected officials report to Town Hall to sign and file the official oaths. Curiously, however, no one reminded or told petitioner, the sole Democrat on the Board, to be in attendance. On February 16, seventeen days after the expiration of the 30-dayperiod, the Town Clerk issued a Certificate of Vacancy and declared Mr. Vetere's position vacant because of the failure to timely file his oath. The Board then proceeded, as is its right under law, to appoint another (Republican) to fill the vacancy. This action caused great public outcry, however, urging the appointee to resign. Mr. Vetere was promptly thereafter appointed to fill his own vacancy until the next annual election, at which time he would have to run to fulfill the balance of his term.

Mr. Vetere sought to be reinstated and reclaim his original position and term and pleaded with the Court to be excused from strict compliance with § 30 due to these particular circumstances. The Court, however, found itself compelled by a clear reading of the statute and appropriate case law to find petitioner's elected position vacant indeed, stating:

Notwithstanding equitable considerations and respondent's consent to reinstatement, the court can only direct reinstatement in the event it finds petitioner was improperly removed as a matter of law. Whether respondents acted unfairly or took advantage of petitioner during a period of personal crisis, therefore, is irrelevant. If this result is harsh, as it is in this case, the remedy lies with the Legislature.... In this case, since petitioner did not file within 30days of commencement of his term, the office became vacant on Feb. 1,1996.... The Town Board and Village Trustees were entitled, in turn, to declare a vacancy and to fill it. (12)

The situation presented in Vetere is illustrative of the problems faced when considering how to avoid equity considerations, and is instructive. Both the Election Law and the Village Law seek to minimize potentially harsh results imposed by § 30 by requiring the Village Clerk to notify officials of the § 30 mandate. The difficulty here lies with enforcement, however. If meeting one's official duty is paramount, enforcement of a law requiring a clerk to notify others of their duty might result in the removal of said clerk for non-performance or non-feasance. This produces a harsh result in itself, and neither does it eliminate, ameliorate or excuse the duty of the official to timely file. There are simply too many possible equity considerations to statutorily exempt some and not others. No excuses, therefore, can be deemed worthy as exceptions.

Finally, Supreme Court Justice Nicholas Colabella, who delivered the opinion in Vetere, made a truly correct observation. If § 30can produce a popularly perceived harsh result by not permitting any exceptions to its mandate, the remedy lies not with the Court but with the Legislature. Members of the New York Bar must agree, for It is surely the proper role of the judiciary to declare what the law is, and not what it ought to be.

Since no exceptions can be accepted by the courts to relieve the demands of the "emphatic and unequivocal" language of the statute,(13) Public Officer, Beware! No excuses under New York Law can remedy your unenviable situation.

Non-Compliance is Not a "Technical Omission"

Is the law acceptable? If not, what ought it to be? Is the law too harsh in its result by not permitting exceptions to the 30-day limit for filing the qualifying oath? We know that the limit was already extended from 15 to 30 days. Should the limit be two months? Is a limit necessary at all? Why should

the office become vacant by operation of law "so much so as though the appointee were dead"? (14)What is all this fuss about an oath of office not being timely filed? Is it merely a "technical" bugaboo that should be significantly eased? Or, is the demand for strict compliance rational and wise? This author believes the latter.

The New York Legislature apparently believes the taking of the oath of office to be a critical qualification for those in public office accepting the public trust. An oath, we are all aware, is a solemn promise the taking of which is described as "burdening the conscience" where something is present to distinguish between an oath and a bare assertion. (15)

An oath, and its required accompanying and distinguishing act, is what can hopefully establish trust between people. Through this device in a public setting, the people are offered some assurance that the words and actions of public officers are possibly being carefully guided by something other than the official's own set of self serving principles. The swearing-in ceremony is visual and psychologically binding; the filing is written and legally binding. Is there another act which could as simply convey a solemn promise to behave with a full measure of integrity? How else might the public accept the offer of honest public service if not with a solemn, believable offer being made, by way of oath, to create a contract with all the rights and responsibilities we assume are contained init?

The public must be offered something which fosters confidence in the official's moral responsibility. The official's conscience must be seen to be sufficiently burdened by something to help assure that the desired devotion to the public's trust might reach broadly into the official's public relations and daily decision-making. It is this promise, this oath of office, which helps to hold a civil society together.

Certainly, it is an easy task to file an oath of office within 30days of the commencement or notification of one's term, and no one in public administration should be statutorily charged with informing an other official of his or her duties. This is more properly the job of the official and his legal counsel. The purpose of the requirement reflects wise reasoning and speaks to the act being most critical for the health of the compact among the governed and the governors and, therefore, can permit no exception.

The "emphatic and unequivocal" language of § 30, Public Officers Law represents one of the important links in the web of our representative democracy and is on the far other side of a mere "technical" nuisance. To reiterate, Public Officer, Beware! The law as it is presently set forth is there to protect, not to punish. No excuses will save a public term of office without taking and timely filing a solemn promise to the people served.

1 New York Law Journal, April 23, 1996, p. 29, col. 6.

2 Section 30, entitled Creation of vacancies, provides, in part:

1. Every office shall be vacant upon the happening of one of the following events before the expiration of the term thereof:...

> h. His refusal or neglect to file his official oath or undertaking, if one is required, before or within thirty days after the commencement of the term of office for which he is chosen, if an elective office, or if an appointive office, within thirty days after notice of his appointment or within thirty days after the commencement of such term...

Personnel on Active Duty with the Armed Forces have a 90 day limit imposed for filing, after which time a vacancy may be declared by operation of law.

3 Cerisse Anderson, "Technical Omission Costs Official His Post, "New York Law Journal, April 22, 1996, p. 1.

4 People v. Keator, 166 App. Div. 368, 154 N.Y.S. 1007.

5 66 A.D. 2d 966, 412 N.Y.S. 2d 428.

6 92 A.D. 2d 1022, 461 N.Y.S. 2d 439.

7 89 Misc. 2d 183, 391 N.Y.S. 2d 49, aff'd 57 A.D. 2d 1051, 395N.Y.S. 2d 617.

8 173 App. Div. 338, 158 N.Y.S. 757, aff'd 221 N.Y. 503, 116 N.E.1069.

9 Opinion, November 19, 1990.

10 1994; 206 A.D. 2d 462, 614 N.Y.S. 2d 564, leave to appeal denied 84 N.Y. 2d 807, 621 N.Y.S. 2d 516, 645 N.E. 2d 1216.

11 Section15-128 Election Law: "The clerk of the village shall, within three days after the election of a village officer, not if each person elected of his election, and of the date thereof, and that, in order to qualify: he is required to file his oath of office... and that upon his failure so to do he will be deemed to have declined the office."

12 The Court, citing the Lombino case and others, observed that the failure to file constitutes an automatic vacancy and is not subject to a cure nunc pro tunc by a belated filing.

13 Walton v. Hicks, supra.

14 Walton v. Hicks, supra.

15 O'Reilly v. People of the State of New York, 86 N.Y. 154, 1881.Judge Finch of the Court of Appeals further stated:

Some form of an oath has always been required, for the double reason that only by some unequivocal form could the sworn be distinguished from the unsworn averment, and the sanctions of religion add their solemn and binding force to the act. (Pandects,xii, 2; 3 Coke's Inst. 165; 1 Phil. on Ev. 15; 1 Starkie on Ev. 23;Lord HARDWICKE, in Omychund v. Barker, 1 Atkyns, 21; Tyler on Oaths,15; 1 Greenleaf on Ev., §§ 328, 371; 1 Alison's Crim. Law,474; 3 Wharton's Am. Crim. Law, § 2205; 2 Arch. Crim. Pl.,1723.)... [T]hese sanctions have grown elastic, and gradually accommodated themselves to differences of creed, and varieties of belief, so that, as the Christian is sworn upon the Gospels, and invokes the Divine help to the truth of his testimony, the Jew also may be sworn upon the Pentateuch, the Quaker solemnly affirm without invoking the anger or aid of Deity, and the yen too kneel before his Brahmin priest with peculiar ceremonies... The changes of form incident to the growth of nations and of commerce have been serious, but have not dispensed with a form entirely. . . A wide scope, a large liberty, is thus given to the form of the oath, but some form remains essential. Something must be present to distinguish between the oath and the bare assertion. An act must be done, and clothed in such form as to characterize and evidence it. . .

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