

6. The amount of annual and sick leave to which such employees are entitled is determined by regulations of the board. Memorandum No. 34.
7. Membership in the state employees' retirement system by such full-time employees was authorized by 1943 P.A. 240, § 13, as amended by 1960 P.A. 156.
8. Each person so employed is determined to be an "employee" in "the service of the state" as those terms are used in 1912 P.A. (1st Ex. Sess.) 10, the workmens' compensation law, Part I, § 7, and as such entitled to the benefits of that act.
9. Said employees are furthering through their services a state public program. Memorandum Opinion No. M-711.
10. Their compensation is paid from funds allocated to the county committees by the state board of trustees.

It follows, in my opinion, that such full-time employees of the county and district committees occupy positions in the state classified service subject to the jurisdiction of the State Civil Service Commission. Const. 1963, art. 11, § 5.

To the extent that any prior opinions of this office are inconsistent herewith, such opinions will no longer be followed. These include II O.A.G. 1955-1956, No. 2476, p. 170. As recognized herein, the committees and their employees are engaged in administering a state program which is being financed at state expense. It follows that title to the fixtures and equipment purchased from moneys allocated by the state board for use in the offices of the county and district committees is in the state.

FRANK J. KELLEY,
Attorney General.

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REAL ESTATE: Brokers and Salesmen.

LICENSING AND REGULATION: Real Estate Brokers and Salesmen.

CONSTITUTIONAL LAW: Equal Protection of Laws.

Citizenship requirement as a prerequisite for licensure as a real estate broker or a real estate salesman is unconstitutional.

No. 4754

November 9, 1972.

Charles E. Harmon, Director
Department of Licensing and Regulation
1033 South Washington Avenue
Lansing, Michigan 48926
Dear Mr. Harmon:

You have requested my opinion on the following question:

"Are the requirements of Section 8 of the Michigan Act¹ that a

¹ 1919 P.A. 306, M.C.L.A. 451.201 *et seq.*; M.S.A. 19.791 *et seq.*

real estate broker's license not issue to an applicant who is not a citizen of the United States and that an applicant for a real estate salesman's license be a citizen of the United States, constitutional and enforceable, as long as the applicants meet all other requirements for their respective licenses?"

Section 8 of the statute², setting forth the specific requirements for a broker's license, states:

" . . . A broker's license shall not be issued to any new applicant who is not a citizen of the United States. . . ."

and thereafter, in the same section, after setting forth the requirements for licensure of a salesman, states:

" . . . Every applicant for a salesman's license shall be a citizen of the United States."

The Fourteenth Amendment to the United States Constitution³ decrees:

" . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

It is clear beyond peradventure that lawfully admitted resident aliens fall within the purview of the term "persons" in its constitutional context. See *Yick Wo v. Hopkins*, 118 U.S. 356, 6 S. Ct. 1064, 30 L. Ed. 220 (1886); *Truax v. Raich*, 239 U.S. 33, 36 S. Ct. 7, 60 L. Ed. 131 (1915); *Takahashi v. Fish & Game Comm.*, 334 U.S. 410, 68 S. Ct. 1138, 92 L. Ed. 1478 (1948); *Graham v. Richardson*, 403 U.S. 365, 91 S. Ct. 1848, 29 L. Ed. 2d 534 (1971).

The United States Supreme Court in *Truax, supra*, stated:

" . . . The authority to control immigration—to admit or exclude aliens—is vested solely in the Federal Government. *Fong Yue Ting v. United States*, 149 U.S. 698, 713. The assertion of an authority to deny to aliens the opportunity of earning a livelihood when lawfully admitted to the State would be tantamount to the assertion of the right to deny them entrance and abode, for in ordinary cases they cannot live where they cannot work. And, if such a policy were permissible, the practical result would be that those lawfully admitted to the country under the authority of the acts of Congress, instead of enjoying in a substantial sense and in their full scope the privileges conferred by the admission, would be segregated in such of the States as chose to offer hospitality." (p. 42)

To sustain the validity of a citizenship requirement in a statute licensing real estate brokers and salesmen, it must be shown that the classification is reasonable. Occupational licensing statutes provide protection for the public by insuring competency of the practitioners and the relationship between competency and alienage has no rational basis when the applicant is examined for competence prior to licensure and subject to disciplinary action for incompetence thereafter.

Based upon the decision of the Michigan Supreme Court in *Templar v. State Board of Examiners of Barbers*, 131 Mich. 254 (1902), this office,

² 1919 P.A. 306, § 8, M.C.L.A. 451.208; M.S.A. 19.798.

³ U.S. Const., Am. XIV, § 1

in three earlier opinions, has held that citizenship requirements as a prerequisite to licensure as a barber or nurse are unconstitutional⁴, and I am of the opinion that such a requirement is unconstitutional when applied to real estate brokers and salesmen. Under familiar rules of statutory construction⁵, the invalidity of these provisions will not affect the other valid provisions of the act. Accordingly, your question is answered in the negative.

FRANK J. KELLEY,
Attorney General.

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PHYSICIANS, SURGEONS: Citizenship Requirements.

CONSTITUTIONAL LAW: Citizenship Requirement A Denial of Equal Protection of Laws.

The requirement that an applicant for a license to practice medicine be a citizen of the United States is unconstitutional as a denial of equal protection of the law.

No. 4755

November 9, 1972.

John M. Wellman, M.D., Executive Secretary
Board of Registration in Medicine
1033 South Washington Avenue
Lansing, Michigan 48926

This is in response to your request for my opinion on whether the requirement of United States citizenship for medical licensure under section 3 of the medical practice act, 1899 P.A. 237¹, is constitutional. That section reads in pertinent part:

“. . . This registration and certificate shall be granted to such applicant as shall furnish satisfactory proofs of being at least 18 years of age, and evidence of being either a citizen of the United States or of having valid second naturalization papers, and of good moral and professional character. . . .”

The fourteenth amendment to the federal constitution,² reads:

“. . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

It has long been held that the term “person” as used in the fourteenth amendment includes lawfully admitted resident aliens as well as citizens,

⁴ O.A.G., 1941-1942, No. 20579, p. 261 (July 28, 1941); O.A.G., 1947-1948, No. 705, p. 589 (July 11, 1948); O.A.G., 1963-1964, No. 4248, p. 316 (March 16, 1964).

⁵ *Baldwin v. North Shore Estates Association*, 384 Mich. 42 (1970); M.C.L.A. 8.5; M.S.A. 2.216.

¹ As last amended by 1972 P.A. 12; M.C.L.A. 338.53; M.S.A. 14.533.

² U.S. Const, Am. XIV, §1.