

730518.4

PODIATRISTS: Citizenship Requirement a Denial of Equal Protection of the Laws.

CONSTITUTIONAL LAW: Citizenship Requirement a Denial of Equal Protection of the Laws.

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

Opinion No. 4767

May 18, 1973.

Board of Registration in Podiatry
1116 South Washington Avenue
Lansing, Michigan 48926

You have asked for my opinion on whether OAG 1971-1972, No 4755, p 111 (November 9, 1972) supersedes 2 OAG 1955-1956, No 2520, p 231 (April 23, 1956).

2 OAG 1955-1956, No 2520, *supra*, indicates that the Attorney General was informed that an applicant for licensure by the State Board of Registration in Chiropody had applied for citizenship but had, at that time, not fulfilled the residency requirement. In that context the Attorney General was asked if under the chiropody act, 1915 PA 115, as amended, being MCLA 338.301 *et seq*; MSA 14.661 *et seq*, United States citizenship was one of the qualifications for taking the examination. It was concluded by the Attorney General that since citizenship was an express requirement for licensure the lack of citizenship rendered an applicant ineligible to take the examination. The constitutionality of that requirement was neither raised nor considered.

In OAG 1971-1972, No 4755, *supra*, the Attorney General was asked if the citizenship requirement for licensure under the medical practice act, 1899 PA 237, as amended, being MCLA 338.51 *et seq*; MSA 14.531 *et seq*, was constitutional. It was concluded in that opinion that the citizenship requirement was unconstitutional as a denial of equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

You have now raised the issue as to whether the citizenship requirement of 1915 PA 115, *supra*, is constitutional. The requirement is found in section 2(1) of that act and provides as follows:

"On and after the date of the taking effect of this act, all persons desirous of practicing podiatry (chiropody) in this state shall make application upon a blank form authorized and furnished by the board of registration in podiatry to the secretary of the board for a license. This license shall be granted to such applicants after they shall furnish satisfactory proof of being . . . a citizen of the United States of America, and of good moral character, but only upon compliance with the following conditions contained in either or any of subdivisions 1, 2 or 3 of this section. . . ." MCLA 338.302; MSA 14.662

The reasoning contained in OAG 1971-1972, No 4755, *supra*, is applicable here. It was therein concluded that the citizenship requirement must be tested for conformity to the equal protection provision of the Fourteenth Amendment to the Constitution of the United States which protection must be afforded to citizens and aliens alike. It was stated that:

"A legislative classification, such as one distinguishing between citizens and aliens, can be sustained only if it relates to the purpose of the act in which it is found. The purpose of the medical practice act is to protect the health and welfare of the people of this state by insuring that medical practitioners meet all the minimum requirements pertaining to education and practice. There is no rational basis for distinguishing between citizens and aliens for, if an alien applicant for licensure meets all of the requirements pertaining to education and practice contained in the medical practice act, the purpose of the act is served and the people of this state are assured that the individual applicant has met the requisite standards of competence."
(p 112)

The citizenship requirement of 1915 PA 115, *supra*, is equally lacking in rational basis.

Accordingly, it is my opinion that the citizenship requirement of section 2(1) of 1915 PA 115, *supra*, is unconstitutional as a denial of equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States. 2 OAG 1955-1956, No 2520, p 231 (April 23, 1956) is overruled.

FRANK J. KELLEY,
Attorney General.

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CONSTITUTIONAL LAW: Recall of Public Officers

ELECTIONS: Recall of Officers

SCHOOLS AND SCHOOL DISTRICTS: Recall of School Board Members

VILLAGES: Recall of Officers

Section 956 of the Michigan Election Law, 1954 P.A. 116, violates art 2, § 8 of the Michigan Constitution of 1963.

Opinion No. 4780

May 18, 1973.

Honorable John T. Bowman
State Senator
The Capitol
Lansing, Michigan 48901

You have asked for an opinion of the Attorney General concerning the signature requirements for the purpose of recalling a school board member.

Const 1963, art 2, § 8, provides that all elective officers other than judges of courts of record are subject to recall upon petition of electors