Valley College, No. 7609-D, appeal dismissed by stipulation,—Mich App —, in which the Court said:

> "It is, therefore, the judgment of this Court, that Saginaw Valley College shall disclose and make available to the Plaintiff, and the public, the records of this institution, dealing directly or indirectly with salary, bonuses, allowances, or fringe benefits, (giving these terms the broadest possible effect), of every employee of Saginaw Valley College, from the Night-Watchman to the President, or anyone on the public payroll in that institution." p 4

FRANK J. KELLEY,
Attorney General.

730824.1

PSYCHOLOGISTS: Citizenship requirement for licensure

CONSTITUTIONAL LAW: Citizenship requirement for licensure as a psychologist

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

Opinion No. 4775 August 24, 1973.

Director
Department of Licensing and Regulation
1033 South Washington Avenue
Lansing, Michigan 48926

You have requested my opinion as to whether the requirement of citizenship as a prerequisite to licensure under the Psychologist Registration Act [1]

Section 3 of 1959 PA 257, as amended, *supra,* requires that:

> "Every applicant for certification under this act shall:
>
> "* * *
>
> "(2) Be a citizen of the United States or have declared his intention of becoming one." MCLA 338.1003; MSA 14.677(3)

The Fourteenth Amendment to the United States Constitution[2] 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 that lawfully admitted resident aliens fall within the purview of the term "person" in its constitutional context. See *Yick Wo* v *Hopkins,* 118 US 356, 6 S Ct 1064, 30 L Ed 220 (1886); *Truax* v *Raich,* 239 US 33, 36 S Ct 7, 60 L Ed 131 (1915); *Takahashi* v *Fish & Game Comm,* 334 US 410, 68 S Ct 1138, 92 L Ed 1478 (1948); *Graham* v *Richardson,* 403 US 365, 91 S Ct 1848, 29 L Ed 2d 534 (1971).

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[1] 1959 PA 257, as amended; MCLA 338.1001 *et seq;* MSA 14.677(1) *et seq.* **is constitutional and enforceable.**

[2] US Const, Am XIV, § 1.

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)

In *Graham* v *Richardson, supra,* the Supreme Court concluded that classifications based on alienage are inherently suspect. Very recently, in *In re Griffiths,* 413 US 717, 93 S Ct 2851, 37 L Ed 2d 910 (1973), the Supreme Court stated:

"The Court has consistently emphasized that a State which adopts a suspect classification 'bears a heavy burden of justification,' *McLaughlin* v. *Florida,* 379 U. S. 184, 196 (1964), a burden which, though variously formulated, requires the State to meet certain standards of proof. In order to justify the use of a suspect classification, a State must show that its purpose or interest is both constitutionally permissible and substantial, and that its use of the classification is 'necessary to the accomplishment' of its purpose or the safeguarding of its interest.

"Resident aliens, like citizens, pay taxes, support the economy, serve in the armed forces, and contribute in myriad other ways to our society. It is appropriate that a State bear a heavy burden when it deprives them of employment opportunities."

The Michigan Supreme Court on July 24, 1973 followed *In re Griffiths, supra,* in its decision in *In re Houlahan,* 389 Mich 665 (1973), in which the statutory citizenship requirement for licensure as an attorney was declared unconstitutional in violation of the Fourteenth Amendment to the United States Constitution.

In OAG 1971-1972, No 4755, p 111 (November 9, 1972) it was concluded that the citizenship requirement for licensure under the medical practice act[3] was unconstitutional as a denial of equal protection of the laws in violation of the Fourteenth Amendment of the Constitution of the United States. The reasoning contained in the aforesaid opinion is applicable here. It was stated in that opinion:

"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 require-

[3] 1899 PA 237, as amended; MCLA 338.51 *et seq;* MSA 14.531 *et seq.*

ments 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 1959 PA 257, as amended, *supra,* is equally lacking a rational basis.

Accordingly, it is my opinion that the citizenship requirement of section 3(2) of 1959 PA 257, as amended, *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. Under a well-settled rule of statutory construction[4] the invalidity of this provision will not effect the other valid provisions of the act.

FRANK J. KELLEY,
Attorney General.

730824.2

LAND SURVEYS: Recording; Time of Recording

SURVEYORS: Responsibility for recording surveys.

One conveying the property is responsible for recording the survey if a survey is made. A certified copy of the survey must be recorded at the time of recording the conveyance.

Opinion No. 4791 August 24, 1973.

Honorable Bill S. Huffman
State Representative
The Capitol
Lansing, Michigan 48926

Mr. Robert Jagow, Secretary
Board of Registration for
Land Surveyors
1116 South Washington Avenue
Lansing, Michigan 48926

You have posed the following questions with regard to 1970 PA 132, as amended; MCLA 54.211 *et seq*; MSA 13.115(61) *et seq;* for my consideration:

"1. Does Act 132 as amended require a survey to be made and recorded before or at the same time a title is conveyed for any parcel newly described other than a lot in a recorded subdivision?

"2. If the answer to question #1 is affirmative is it the responsibility of the Surveyor to record this document or is it the responsibility of some other party?

"3. Assuming the answer to question #1 is affirmative, would it be proper for a survey to be recorded many years in advance of transfer of title as in the case of a purchase under land contract ultimately resulting in transfer?

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[4] *Baldwin* v *North Shore Estates Association,* 384 Mich 42 (1970); MCLA 8.5; MSA 2.216.