

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<sup>4</sup> the invalidity of this provision will not effect the other valid provisions of the act.

FRANK J. KELLEY,  
*Attorney General.*

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**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?

<sup>4</sup> *Baldwin v North Shore Estates Association*, 384 Mich 42 (1970); MCLA 8.5; MSA 2.216.

Section 1 of 1970 PA 132, as amended by 1972 PA 280, *supra*, provides as follows:

“(1) Whenever lands are *surveyed* into 4 parcels or less, or a greater number when such parcels are of 10 acres or more, or any boundary survey where permanent corners are monumented, a certified *copy may be* recorded in the office of the register of deeds in the county in which the land is situated, if such survey meets the requirements of this act.

“(2) If a survey is made for the purpose of describing the parcel in a conveyance of title, a certified copy of that survey *shall be recorded* at the time of recording the conveyance of title with the register of deeds in the county in which the land is situated. The requirements of this act are in addition to Act No. 288 of the Public Acts of 1967, as amended, being sections 560.101 to 560.923 [sic] of the Compiled Laws of 1948. Land platted in accordance with Act No. 288 of the Public Acts of 1967, as amended, or land previously surveyed and recorded and for which no change in boundary description is made from a previously recorded survey need not be recorded. Surveys solely for mortgage certificate purposes need not be recorded.” MCLA 54.211; MSA 13.115(61) (Emphasis added.)

Prior to being amended by section 1 of 1972 PA 280, effective January 1, 1973, 1970 PA 132 read as follows:

“Whenever lands are *divided* into 4 parcels or less, or a greater number when such parcels are of 10 acres or more, or any boundary survey where permanent corners are monumented, a certified *survey shall* be recorded in the office of the register of deeds in the county in which the land is situated, if such survey meets the requirements of this act.” (Emphasis added.)

In response to a request by you, this office issued a letter opinion dated July 17, 1972 interpreting the above provision. In that opinion it was stated, in pertinent part, that:

“The first section of Act 132 clearly provides for the recording of a survey made whenever lands are divided into four parcels or less. No exception is made if such a survey is made of land within a recorded subdivision. . . .”

It will be noted that the amendatory language of 1972 PA 280, *supra*, strikes the word “divided” and replaces it with “surveyed”. The second change is the striking of the words “survey shall” in the fourth line and replacing them with the words “copy may”. These changes result in a different conclusion than was reached in the opinion of July 17, 1972, issued prior to the amendatory language of 1972 PA 280. The unamended language clearly use words of a mandatory nature. In contrast, the language as amended permits certain acts upon compliance with certain conditions.

Thus, in response to your first question, 1970 PA 132, as amended by 1972 PA 280, does not require a survey to be made at any time, but only provides that whenever one is made a certified copy may be recorded. It is further provided in section 1(2), which was added by 1972 PA 280, that

"If a survey is made for the purposes of describing the parcel in a conveyance of title," that a certified copy of the survey "shall be recorded at the time of recording the conveyance."

With regard to your second question, there is no express indication in section 1(2) as to whose responsibility it is to file the survey. The only time a survey is required to be filed is "if one is made for the purposes of describing the parcel in a conveyance of title." In this instance, the survey is to be recorded "at the time of recording the conveyance of title." Since the legislature has not expressly imposed a duty upon the surveyor to record the survey it is a reasonable construction of the act would dictate that the one conveying the property is responsible for recording the survey.

In answer to your last question, the only limitation as to when the survey is to be recorded is set forth in section 1(2). If a survey is made for the purposes of describing property in a conveyance of title, the survey must be recorded at the time the conveyance of title is recorded. Since transfer of title is not recorded until the land contract has been performed, the survey need not be recorded until that time.

FRANK J. KELLEY,  
*Attorney General.*

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**CRIMINAL LAW: Constables carrying concealed weapons**

**CONSTABLES: Concealed Weapons**

**FIREARMS: Constables**

Constables must apply to the Concealed Weapons Licensing Board of their county for a determination as to whether their individual situation falls within the meaning of the exception to the application of the concealed weapons licensing law permitting peace officers who are "regularly employed and paid" to carry concealed weapons without a license.

Opinion No. 4792

August 27, 1973.

Honorable Paul A. Rosenbaum  
State Representative  
The Capitol  
Lansing, Michigan 48901

You referred to this office an inquiry from one of your constituents concerning the question of whether constables are exempt from the requirements of the concealed weapons licensing law; MCLA 28.426; MSA 28.93 and MCLA 750.227; MSA 28.424. There is, of course, a specific statutory exemption from the effect of the concealed weapons licensing law for any person who is a:

" . . . peace officer of a duly authorized police agency of the United States or of the state or any subdivision thereof, who is regularly employed and paid by the United States or the state or such subdivision, . . ." MCLA 23.432a; MSA 28.98(1).