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 1956 PA 152, *supra,* and the provision granting licensure to those aliens who have received "first papers" prior to naturalization, is a further indication that the classification distinguishing between citizens, aliens with first papers and other aliens, is equally lacking in a rational basis.

Accordingly, it is my opinion that the citizenship requirement of section 12 and the temporary license permit under section 13(3) of 1956 PA 152, *supra,* are 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 familiar rule of statutory construction[5] the invalidity of these provisions will not effect the other valid provisions of the act.

FRANK J. KELLEY,
Attorney General.

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DENTISTS: Citizenship requirement for licensure

CONSTITUTIONAL LAW: Citizenship requirement for licensure as a dentist

The statutory requirement that an applicant for a license to practice dentistry be a citizen of the United States or have declared his intention to become such, is unconstitutional as a denial of equal protection of the laws.

Opinion No. 4785 September 14, 1973.

John R. Champagne, D.D.S., Secretary
State Board of Dentistry
1116 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 dental practice act[1] is constitutional and enforceable.

Section 5 of 1939 PA 122, as amended, *supra,* states that:

"No person desiring to practice dentistry shall be licensed until he shall have satisfactorily passed an examination by said board. Every applicant for examination must be a citizen of the United States, or have declared his intention of becoming such. In cases where the applicant has declared his intentions of becoming a citizen, but has not completed his qualifications for citizenship, a temporary license may be issued for the duration of the minimum time required to complete citizenship. Upon completion of the requirements for citizen-

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

[1] 1939 PA 122, as amended; MCLA 338.201 *et seq;* MSA 14.629(1) *et seq.*

ship the board may issue a regular license without further examination. . . ."

The Fourteenth Amendment to the United States Constitution[2] in pertinent part states:

". . . 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).

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, 2855, 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 acomplishment' 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

[2] US Const, Am XIV, § 1.

the statutory requirement of citizenship for licensure as an attorney was declared unconstitutional.

The purpose of the dental practice act is to protect the health and welfare of the people of this state by insuring that dental practitioners meet all minimum requirements pertaining to education and practice. The very language of the statute itself granting temporary licenses to aliens who have declared their intention of becoming a citizen and that upon obtaining citizen status would be granted a permanent license without having to take another examination, bears credence to the position that there is not a rational basis for distinguishing between citizens and aliens in the practice of dentistry.

Accordingly, it is my opinion that the requirement of section 5 of 1939 PA 122, 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 familiar rule of statutory construction[3] the invalidity of this provision will not effect the other valid provisions of the act.

FRANK J. KELLEY,
Attorney General.

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MOTOR VEHICLES – Weight tax on pick-up truck

A pick-up truck weighing less than 4,500 pounds is subject to a vehicle tax of 55 cents per 100 pounds or $12.00, whichever is greater, even though equipped with a fifth-wheel device.

Opinion No. 4793 September 25, 1973.

Honorable DeForrest Strang
State Representative
The Capitol
Lansing, Michigan 48901

You have requested an opinion on the following:

1. Is a pick-up truck of less than 4,500 lbs. pulling a trailer required to register under the elected gross vehicle weight provisions of Section 801(k) of the Michigan Vehicle Code?

2. Has sufficient design change been made when a fifth-wheel device is erected in the middle of the cargo box of a pick-up truck to require its registration under Section 801(k) of the Michigan Vehicle Code?

In determining the answers to these questions, it is important to ascertain the meaning of subsections (k) and (p) of § 801 of the Michigan Vehicle Code, MCLA 257.801; MSA 9.2501, which read as follows:

> "The secretary of state shall collect the following specific taxes at the time of registering a vehicle. . . .
>
> * * *

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