hibiting use of studded tires in certain areas of the state for vehicles coming from another area where such tires are permitted.

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741002.1

BARBERS: Six months residency requirement.

CONSTITUTIONAL LAW: Residency requirements.

The statutory provision requiring 6 months residency as a condition to application for licensure as a barber is unconstitutional.

Opinion No. 4830 October 2, 1974.

Board of Barber Examiners
1033 South Washington Avenue
Lansing, Michigan 48926

You have requested my opinion as to the constitutionality of the 6 months' residency requirement contained in 1968 PA 355; MCLA 338.1601 *et seq.*; MSA 18.117(1) *et seq.* Section 8 provides in part as follows:

> "The board shall not issue an original license under this act until the applicant submits proof that he has been a resident of the state for at least 6 months immediately prior to his application for a license. . . ." MCLA 338.1608; MSA 18.117(8)

In my opinion, and for the reasons set forth below, the durational residency requirement is invalid as a denial of equal protection under the Fourteenth Amendment to the United States Constitution.

Clearly, section 8 of the barber act, *supra,* establishes two classes of residents, one of which is qualified for licensure and one of which cannot be considered for licensure. In determining the validity of classifications under the equal protection clause the first task is to determine by what standard the classification will be judged.

The traditional test is set forth in *Naudzius* v *Lahr,* 253 Mich 216, 222, 223; 234 NW 581, 583 (1931), as follows:

> " '1. The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary. 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality. 3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing that

it does not rest upon any reasonable basis, but is essentially arbitrary.' *Lindsley* v. *Natural Carbonic Gas Co.,* 220 U.S. 61, 78 (31 Sup. Ct. 337, Ann. Cas. 1912C, 160)."

Under this test, a classification will be upheld if it bears a reasonable relationship to the purpose of the statute. As set forth in the barber act, the legislature has vested the Board of Barber Examiners with the power to regulate the licensure of barbers in this state for the protection of the health, safety and welfare of the people. Among other requirements the Board of Barber Examiners may properly require an applicant to pass an examination demonstrating his skill as a barber, demonstrate good moral character and temperate habits, and file a certificate of health with the Board. These requirements are valid conditions for licensure as a barber in the State of Michigan.

However, requiring an applicant to reside in the state for a period of 6 months before making application for a barber license bears no reasonable relationship to the purpose of the statute. The 6 months residency is totally unrelated to skill as a barber, the presence or lack of good moral character and temperate habits, or the condition of health of the applicant. This conclusion is consistent with *New Brunswick* v *Zimmerman,* 79 F2d 428 (CA 3, 1935), where the court stated that barber residency bears no relation to the health, safety and welfare of the public. See also *Lipman* v *Van Zant,* 329 F Supp 391 (ND Miss, 1971), striking down a Mississippi 12 months residency requirement prior to application to the bar; *Webster* v *Wofford,* 321 F Supp 1259 (ND Ga, 1970), voiding a 12 month requirement after taking a bar examination; *Keenan* v *Board of Law Examiners of North Carolina,* 317 F Supp 1350 (ED NC, 1970); and *Potts* v *Honorable Justice of Hawaii,* 332 F Supp 1392 (USDC Hi, 1971).

Moreover, it cannot be argued that the 6 months is required to allow the Board sufficient time to investigate the character, habits and skill of the applicant.

In *Suffling* v *Bondurant,* 339 F Supp 257, 260 (DNM), *aff'd* sub nom *Rose* v *Bondurant,* 409 US 1020; 93 S Ct 460; 34 L Ed 2d 312 (1972), the court upheld the board of bar examiners' rule requiring 6 months residency before admission to the bar. Finding that the 6 months period was a necessary and reasonable amount of time to afford examiners an opportunity to determine character and fitness, the court stated:

"Considered under the traditional test of reasonable classification which is the standard we hold applicable, the six-month residency requirement is reasonable and does not unduly penalize petitioners' right to interstate travel. While rejecting application of the stricter test of Equal Protection in this case, Lipman v. Van Zant, supra, 329 F. Supp. at page 403, we express the view that a state does have a compelling interest in the quality and integrity of the persons whom it licenses to practice law and may impose regulations which promote that interest."

The *Suffling* case can be distinguished, however, since the barber act clearly required 6 months residency before making application and cannot be considered as time needed to determine the qualifications of an applicant.

Durational residency requirements have also been subject to a stricter standard under the equal protection clause. The Supreme Court set out the standard in *Shapiro* v *Thompson,* 394 US 618; 89 S Ct 1322; 22 L Ed 2d 600 (1969). In striking down a one year residency requirement for extension of welfare benefits, the Supreme Court stated that the requirement deterred the right to travel between the states and penalized the exercise of that right by denying the basic necessities of life to a new resident. The standard applied by the court was that a "compelling state interest" must be shown to uphold the classification scheme. The compelling state interest doctrine was extended to voter rights in *Dunn* v *Bloomstein,* 405 US 330; 92 S Ct 995; 31 L Ed 2d 274 (1972). In that case the Supreme Court found that a 6 months residency requirement for voting impinged on the right to travel freely between the states and penalized the exercise thereof by disenfranchisement. Finally, the doctrine was applied to free medical care for indigents at the county's expense in *Memorial Hospital v Maricopa County,* 414 US 812; 94 S Ct 1076; 39 L Ed 2d 306 (1974).

However, in *Shapiro, supra,* the Supreme Court expressly reserved the question presented here. The court stated:

> "We imply no view of the validity of *waiting periods or residence requirements* determining eligibility to vote, eligibility for tuition free education, *to obtain a license to practice a profession,* to hunt or fish and so forth. Such requirements may promote a compelling state interest on the one hand, or may not be penalties upon the exercise of the constitutional right to interstate travel." (394 US 683, fn 21) (Emphasis added.)

While the Supreme Court has not yet ruled expressly on which standard will apply to licensure statutes, at least one case has been affirmed by the Supreme Court in the usage of the rational relationship test. The court in *Suffling, supra,* stated:

> "Petitioners contend that they are the subject of invidious discrimination, that they and the members of the class they represent are being denied equal protection guaranteed by the Fourteenth Amendment of the United States Constitution and that their right to interstate travel has been inhibited. They assert that two classes of citizens have been created for admission to the New Mexico Bar—those who have established six months' residence, have passed the bar examination and have been admitted and those who have passed the bar examination but will not be admitted until their six months' residence has been established. Schware v. Board of Bar Examiners, 353 U.S. 232, 77 S. Ct. 752, 1 L.Ed.2d 796 (1957).
>
> "It is their position that only a compelling state interest justifies restrictions on their right to travel and right to work and that Rule II, subd. A, par. 8 does not further such an interest. They rely on Shapiro v. Thompson, 394 U.S. 618, 89 S. Ct. 1322, 22 L.Ed.2d 600 (1969) wherein the United States Supreme Court applied the stricter rather than the traditional test of reasonableness of classification in determining Equal Protection. *Shapiro* held that the classification

created by the imposition of a one-year waiting period for welfare benefits did not promote a compelling state interest and was unconstitutional. The holding of *Shapiro* is not applicable here however as that case specifically excludes persons seeking professional licenses." (339 F Supp 258, 259)

A similar result was reached in *Kline* v *Rankin,* 352 F Supp 292, 295 (ND Miss, 1972), where the court rebuffed a contention that residency requirements be subjected to close scrutiny, stating:

"Therefore, plaintiffs urge that res judicata is not defense in the instant case because *Dunn* is an intervening decision which has the effect of requiring that Mississippi's 90-day residency requirement be scrutinized under a more exacting test of equal protection than the traditional standard of 'rational connection' employed in *Lipman.* We think plaintiffs' contention is without merit.

"Although *Dunn* unequivocally settled the question of state voter residency requirements and in so doing emphasized that the adoption of the exacting 'compelling state interest' test of equal protection, *Dunn* cannot be construed to enunciate the principle that a residency requirement of any character impinges the fundamental right of citizens to travel interstate; rather, in *Dunn* the Supreme Court merely extended its reasoning in *Shapiro* to voter residency requirements. There is no indication that the *Dunn* Court expressed an opinion superseding the controlling issues in *Lipman* which were specifically reserved in *Shapiro,* i.e., the validity of waiting periods or residency requirements to obtain a license to practice a profession or whether such requirements penalize the exercise of the right to travel interstate."

Although the Supreme Court has sanctioned use of the reasonable relationship test when determining the validity of durational residency requirements for licensure to practice a profession, even under the compelling state interest standard section 8 of the barber act, *supra,* must fail. Having found that a 6 months residency requirement bears no reasonable relationship to the purpose of the barber act, *a fortiori,* there is no compelling state interest in requiring applicants to reside in the state 6 months before making application. The state interest served by the licensure of barbers is protection of health, safety and welfare by certifying only skilled barbers who possess good moral character. The fact that a person has resided in this state for 6 months before making application in no way furthers the state interest. Clearly, a requirement which cannot be valid under the reasonable relationship test is even less defensible under the close scrutiny of the compelling state interest test.

In expressing my views as to the durational aspects of this section, I make no opinion nor imply any view as to the requirement of residency per se as a condition of licensure under the barber act.

In conclusion, the 6 months residency requirement is invalid in that the classification scheme bears no reasonable relationship to the purpose of the statute. Therefore, the requirement is unconstitutional as a violation

of the equal protection clause of the Fourteenth Amendment to the United States Constitution.

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NURSES: Maiden name.

A married woman may retain her maiden name.

The Board of Nursing may require a licensee to notify it of any change of name or address.

Opinion No. 4834 October 2, 1974.

State Board of Nursing
1033 South Washington Avenue
Lansing, Michigan 48926

You have requested my opinion on whether the State Board of Nursing may issue a license to a married woman in her maiden name.

As you have explained, there have been instances where married nurses have wanted to use their maiden name on their licenses without resorting to judicial proceedings.

There are two kinds of situations involved; one occurs when a married woman desires to retain her maiden name, and the other when she wants to return to her maiden name after having assumed her husband's name. Restating the first situation in question form: Does marriage automatically change the name of a woman from her maiden name to that of her husband?

A search of authority in Michigan reveals that marriage does not automatically change a woman's name. In OAG, 1935-1936, No 93, p 254, 255 (July 30, 1935), it is stated:

> "There can be no doubt that a woman, upon marriage, has the right to take the surname of her husband, and such is customary, but there is no law which forbids a woman from continuing to use her maiden name in all business dealings, . . ."

A discussion of whether, after marriage, it is proper for a woman to continue to use her name in public office appears in OAG, 1929-1930, p 824 (March 27, 1930), which concludes that there is nothing requiring a married woman to use her husband's name in public office. See also OAG, 1939-1940, p 53 (March 13, 1939) and OAG, 1923-1924, p 138 (March 29, 1923). Thus, it is clear that upon marriage a woman may continue to use her maiden name or she may adopt the name of her husband.

The second situation presents the question of whether having assumed her husband's name, may a married woman return to the use of her maiden name?