

construction to 1945 PA 189, § 1, *supra*, resolves all doubt as to the scope of the nurse exemption; it applies to nurses on war duty upon their entry into such service and continues until they leave the service. Of course, nurses might otherwise qualify for the exemption by, for example, serving on active duty in the armed forces of the United States.

Accordingly, in answer to your specific questions, the State Board of Nursing and the Board of Examiners in Mortuary Science have not only the authority but also a statutory duty to waive payment of license renewal fees by their licensees. Mortuary science licensees on active duty in the armed forces of the United States, its auxiliaries or the merchant marine are not required to pay license renewal fees during the period of their service. Nurses on active duty in the armed forces of the United States, its auxiliaries, the merchant marine or who are on war duty are not required to pay license renewal fees during the period of their service.

FRANK J. KELLEY,  
*Attorney General.*

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**VETERANS:** Michigan Veterans Facility.

**CONSTITUTIONAL LAW:** Durational residency requirements for admission to Veterans Facility.

The five-year durational residency requirement for admission to the Michigan Veterans Facility is unconstitutional.

Opinion No. 4849

December 20, 1974.

Mr. Joseph R. Sanson  
Chairman, Board of Managers  
Michigan Veterans Facility  
3000 Monroe Avenue, N. W.  
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You have requested my opinion as to the validity of the five year durational residency requirement contained in the statute governing the operation of Michigan Veterans Facility. 1885 PA 152, §11, MLCA 36.11; MSA 4.878 in pertinent part states:

"No applicant shall be admitted to the facility unless . . . he has resided in the state of Michigan for at least five consecutive years next preceding the date of his application for admission to the facility."

As a specific instance of a veteran seeking admission to the facility without having fulfilled the durational residency requirement, you cited the case of a veteran who had entered the armed forces as a resident of another state and had not resided in Michigan until being transferred to the Veterans Administration Hospital in Ann Arbor. This veteran, however, has indicated in his application for admission to the Michigan Veterans Facility that his permanent address is in this state although the

address given by him is the same as his sister's. The application further indicates that the Veterans Administration Hospital in Ann Arbor is the temporary address of the applicant.

It is my opinion that the five year durational residency requirement contained in the above-cited 1885 PA 152 §11, is unconstitutional and cannot be considered in determining whether a veteran is qualified for admission to the Michigan Veterans Facility.

In *Barnes v Board of Trustees, Michigan Veterans Trust Fund*, 369 F Supp 1327 (WD) Mich 1973, the Federal District Court struck down a similar five year durational residency requirement contained in the Michigan Veterans Trust Fund statute, 1946 1st ex. sess. PA 9, §602; MCLA 35.602; MSA 4.1064(a). The basis for the determination of unconstitutionality of the durational residency requirement is stated in the following excerpt from *Barnes*:

"This court finds that the classification involved in this case clearly penalizes the right to travel, as it mandates that an otherwise qualified person who has recently traveled must wait five years before he can obtain emergency aid which could be immediately obtained by one who has not recently moved into the state. As a three-judge District Court stated in *Carter v. Gallagher*, 337 F. Supp. 626 (D.Minn.1971):

"There is no question that the fundamental right to interstate travel is involved in the instant case. It is no more open to question, in the opinion of this Court, that a statute which requires a person to wait five years to obtain employment preference granted immediately to an otherwise equally qualified person who did not so travel imposes a penalty operative solely upon the exercise of that right. Under such circumstances the defendants must demonstrate that there is some compelling State interest which justifies the distinction. *Oregon v Mitchell*, 400 U.S. at 238, 91 S. Ct. 620, 27 L.Ed.2d 272, 337 F.Supp. at 632."

"Also, as the Court of Appeals for the Sixth Circuit recently stated in *Green v. McKeon*, 468 F.2d 883 (6th Cir. 1972):

"The durational residency requirement at issue classifies \* \* \* on the basis of recent travel. *That classification alone requires that the requirement be strictly scrutinized because it operates to penalize the exercise of the basic constitutional right to travel.*" (Emphasis supplied.) At 884

"(For further analysis of the meaning of 'penalize,' see also *King v New Rochelle Municipal Housing Authority*, 442 F.2d 646 (2nd Cir. 1971), cert. den. 404 U.S. 863, 92 S.Ct. 113, 30 L.Ed.2d 107 and *Cole v. Housing Authority of City of Newport*, 435 F.2d 807 (1st Cir. 1970.)

"These cases all suggest that a person is penalized if the resident who has traveled is subjected to conditions less lenient than those to which the non-traveling resident is subjected. That is certainly the case here, as a resident who has recently traveled to this state, who wishes to apply to the Michigan Veterans Trust Fund for aid, must bear a burden which the non-traveling resident is not subjected to,

in that he must live in this state for five years before his application will even be heard. Therefore, he is penalized because he has recently traveled.

"However, even if the word 'penalize' were interpreted more rigorously, it is clear that the durational residency requirement at issue in the instant case would still be held to penalize the exercise of the right to travel, as it can operate to bar a person's application for aid even though his former state might have heard a very similar application. This fact is revealed by the defendant's summary of state laws which clearly indicates that many other states have similar aid programs for their resident veterans. Therefore, the instant durational residency requirement might penalize someone by taking away an opportunity which existed before he chose to travel. In fact, Mr. Barnes has been subjected to such a loss, as his former state, Illinois, has a veteran aid program similar to Michigan. Surely, someone is penalized when he loses an opportunity merely because he has recently exercised his constitutional right to travel."

In response to the question, therefore, it is my opinion that the five year durational residency requirement contained in 1885 PA 152, §11, *supra*, is invalid. However, despite the fact that a veteran may not be denied admission to the veterans facility because he has not been a resident in this state for five years, is still necessary to determine whether the veteran has established a bona fide residence within this state.

FRANK J. KELLEY,  
*Attorney General.*

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