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**INTOXICATING LIQUORS: Citizenship requirement for license.**

**CONSTITUTIONAL LAW: Citizenship requirement for license.**

**LICENSES AND PERMITS: Citizenship requirement for license.**

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

Opinion No. 4884 October 8, 1975.

Mr. Richard K. Helmbrecht, Director
Department of Commerce
Law Building
Lansing, Michigan 48913

You have requested my opinion as to certain questions arising under the Michigan Liquor Control Act, 1933 (ex sess) PA 8; MCLA 436.1 *et seq;* MSA 18.971 *et seq.* One of your questions, to be addressed herein, is whether the provisions of the act which require that an individual licensed to sell alcoholic liquor shall be an American citizen are constitutionally valid. My responses to your other two unrelated questions will be forthcoming.

The pertinent language of 1933 (ex sess) PA 8, *supra,* § 23 provides that when a vendor is a corporation, the stockholders must be citizens of the United States and that when a vendor is an individual, he must be a citizen of the United States. Also, Section 2m reads, in part:

> " 'Vendor' means a person licensed by the commissioner under this act to sell alcoholic liquor."

and Section 2d specifies:

> " 'Citizen' means any person not less than 18 years of age who is a citizen of the United States of America."

It is my opinion that the requirement of citizenship as a prerequisite of licensure under the Michigan Liquor Control Act is constitutionally invalid for the reason that the same offends the equal protection clause of the Fourteenth Amendment to the United States Constitution and Const 1963, art 1, § 2.

To satisfy the equal protection clause of the Fourteenth Amendment, and the parallel clause in Const 1963, art 1, § 2, a classification must meet the standards set forth in *Naudzius* v *Lahr,* 253 Mich 216, 222-223; 234 NW 581, 583 (1931):

> " '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 Carbonie Gas Co.*, 220 U.S. 61, 78 (31 Sup. Ct. 337, Ann. Cas. 1912C, 160)."

So viewed, the classification in question can be sustained only if it bears a reasonable relationship to the purpose of the liquor act. The purpose of the act is to control the liquor traffic in the state. No plausible reason can be advanced why an alien who is otherwise eligible to sell alcoholic liquor under the provisions of the Act is disqualified by reason of alienage alone to carry out the responsibilities imposed upon licensees by the Act. In brief, the requisite of citizenship of a licensee does not relate to the control of the liquor traffic.

I am aware that there are authorities which conclude contrary to the foregoing. See, for example, cases discussed in 145 ALR 509 at 515. In my view the opinion expressed herein is consonant with current judicial expression as illustrated by *In re Houlahan,* 389 Mich 665; 209 NW2d 250 (1973), where, on the authority of *In re Griffiths,* 413 US 717, 93 S Ct 2851; 37 L Ed 2d 910 (1973), the statutory requirement of United States citizenship for licensure as an attorney was ruled unconstitutional as offensive to the equal protection clause of the Fourteenth Amendment.

FRANK J. KELLEY,
*Attorney General.*

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**AGRICULTURE: Constitutionality of Filled Milk Act.**

**CONSTITUTIONAL LAW: Filled Milk Act is unconstitutional as to "Milnot."**

**MILK: Constitutionality of Filled Milk Act.**

**The prohibitions against filled milk products contained in the Filled Milk Act, deny the Milnot Company due process of law and equal protection of the laws. This Act, as applied to "Milnot," exceeds the boundaries of the valid exercise of the state's police power to protect the public health, safety and welfare.**

Opinion No. 4902 October 13, 1975.

B. Dale Ball, Director
Department of Agriculture
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Lansing, Michigan 48913

You have requested an answer to the following question:

"In light of the Federal court decision declaring the Federal Filled Milk act unconstitutional, can we enforce the Michigan Filled Milk

Law and disallow the sale of the Milnot filled milk product in Michigan?"

The Michigan Filled Milk Act, 1945 PA 330; MCLA 288.171 *et seq;* MSA 12.618(21) *et seq,* is very similar in terms, objects, and effects to the federal filled milk act, 42 Stat 1486 (1923), 21 USCA 61 *et seq.* The term "filled milk" is defined nearly identically in the two acts. The Michigan act definition states in part:

> "The term 'filled milk' means any milk, cream, or skimmed milk, or combination thereof, whether or not condensed, evaporated, concentrated, powdered, dried, or dessicated, to which has been added, or which has been compounded with any fat or oil other than milk fat so that the resulting product is in semblance of milk, cream, or skimmed milk, whether or not condensed, evaporated, concentrated, powdered, dried or dessicated, . . ." 1945 PA 330, § 2; MCLA 288.172; MSA 12.618(22)

The federal act definition states in part:

> "The term 'filled milk' means any milk, cream, or skimmed milk, whether or not condensed, evaporated, concentrated, powdered, dried, or dessicated, to which has been added, or which has been blended or compounded with, any fat or oil other than milk fat, so that the resulting product is in imitation or semblance of milk, cream, or skimmed milk, whether or not condensed, evaporated, concentrated, powdered, dried, or dessicated. . . ." 42 Stat 1486, 21 USCA 61

Having defined "filled milk" in substantially identical terms, both acts then declare the sale of filled milk to be a fraud upon the public:

> "It is hereby declared that filled milk as defined herein lends itself readily to substitution for or confusion with genuine milk products and that the sale of such filled milk constitutes a fraud upon the public." 1945 PA 330, § 3; MCLA 288.173; MSA 12.618(23)

> "It is hereby declared that filled milk, as defined in section 61 of this title, is an adulterated article of food, injurious to the public health, and its sale constitutes a fraud upon the public. . . ." 42 Stat 1487, 21 USCA 62

By way of proscription, the Michigan act then states:

> "It shall be unlawful for any person, by himself, his servants or agent, or as the servant or agent of another, to manufacture for sale within this state, or sell or exchange, or have in his possession with intent to sell or exchange, or offer for sale or exchange, any 'filled milk' as defined in this act." 1945 PA 330, § 4; MCLA 288.174; MSA 12.618(24)

The proscription provision of the federal act states:

> "It shall be unlawful for any person to manufacture . . ., or to ship or deliver for shipment in interstate or foreign commerce, any filled milk." 42 Stat 1487, 21 USCA 62