has not enacted an initiated legislative proposal within the 40 session day period and the matter is submitted to the people for consideration at a general election, after such measure has been adopted by the people at the polls, an extraordinary majority of three-fourths of the members elected to and serving in each house of the legislature is required to amend or repeal it.

FRANK J. KELLEY,
Attorney General.

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CITIZENSHIP: Teacher's Certificate

TEACHERS: Citizenship requirement for permanent certification

The statutory requirement of United States citizenship as a qualification for a certificate as a school teacher is unconstitutional.

Opinion No. 4925 January 16, 1976.

Dr. John W. Porter
Superintendent of Public Instruction
Michigan Department of Education
Lansing, Michigan

You have requested my opinion whether the requirement of MCLA 340.852; MSA 15.3852, that one be a United States citizen to qualify for permanent certification as a school teacher is constitutional.

MCLA 340.852; MSA 15.3852, in pertinent part, provides:

> ". . . No permanent certificate qualifying a person to teach in the public schools of this state shall be granted to any person who is not a citizen of the United States. . . ."

The United States Supreme Court has 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."
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> *Truax* v *Raich,* 239 US 33, 42; 36 S Ct 7, 11; 60 L Ed 131, 135 (1915).

More recently, in *In re Griffiths,* 413 US 717; 93 S Ct 2851; 37 L Ed 2d 910 (1973), the Supreme Court considered the constitutionality of the citizenship requirement for admission to the Connecticut Bar. The Court ruled that state classifications based on alienage were "inherently suspect." Thereupon, the 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 accomplishment' of its purpose or the safeguarding of its interest.
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> "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."
>
> *Griffiths, supra,* 413 US, at 721-722; 93 S Ct, at 2855; 37 L Ed 2d, at 915.

In the Court's opinion, Connecticut did not meet that burden, and, therefore, the Court struck down the citizenship requirement as violative of the Equal Protection Clause.

Ruling that *Griffiths, supra,* was controlling, our Supreme Court in *In re Houlahan,* 389 Mich 665; 209 NW2d 250 (1973), struck down the citizenship requirement for the Michigan Bar. Similarly, it has been concluded that citizenship requirements for licensure as, *inter alia,* doctors, OAG, 1971-1972, No 4755, p 111 (November 9, 1972), veterinarians, OAG, 1973-1974, No 4776, p 81 (September 14, 1973), and dentists, OAG 1973-1974, No 4785, p 83 (September 14, 1973), are prohibited by the Equal Protection Clause.

In a companion case to *Griffiths,* a New York law which barred noncitizens from civil service employment was examined by the Supreme Court. *Sugarman* v *Dougall,* 413 US 634; 93 S Ct 2842; 37 L Ed 2d 853 (1973). The bar on the employment of aliens applied only to positions in the classified civil service for which competitive exams were given. Thus, while the ban encompassed positions ranging from the menial to the policy making, many state and local jobs, such as teachers, legislative assistants, and judicial officers, had no citizenship requirement at all.

The Court held that this indiscriminate ban on the employment of aliens, when many of the encompassed positions had little, if any, relation to legitimate state interests, to be a violation of the Equal Protection Clause. The Court, however, did indicate that a citizenship requirement could be imposed for:

> ". . . persons holding state elective or important nonelective executive, legislative, and judicial positions, for officers who participate directly in the formulation, execution, or review of broad public policy perform functions that go to the heart of representative government. There, as Judge Lumbard phrased it in his separate concurrence, is 'where citizenship bears some rational relationship to the special demands of the particular position.' "
>
> *Sugarman, supra,* 413 US, at 647; 93 S Ct, at 2850; 37 L Ed 2d, at 863.

Since it was not at issue, neither *Griffiths* nor *Sugarman* reached the precise question of the legality of citizenship requirement for teachers.

Nevertheless, the principles enunciated in those cases control this question. Thus, at the outset, the citizenship requirement of MCLA 340.852; MSA 15.3852 is "inherently suspect," and must "bear a heavy burden" of justification.

For the following reasons, it is my opinion that the heavy burden of justification for the citizenship requirement of MCLA 340.582; MSA 15.3582 cannot be met.

Elementary and secondary school teachers are not "officers who participate directly in the formulation, execution, or review of broad public policy." *Sugarman, supra.* It would appear that the state, consequently, has no judicially recognized justification for the imposition of this broad citizenship requirement.

The State Civil Service Commission does not impose any broad prohibition on legally admitted aliens working in the classified state civil service. Commission Rule 1.4 merely provides that United States citizenship may "be required for appointment to certain positions in the classified service as determined by the state personnel director." Thus, the inconsistency of state imposed citizenship employment requirements, which was condemned in *Sugarman, supra,* appears here.

Although not controlling, it may also be noted that MCLA 340.582; MSA 15.3582 only bars aliens from obtaining a permanent teaching certificate. That being the case, an alien may, if otherwise qualified, obtain a provisional teaching certificate. A provisional certificate, with extensions, allows an alien to teach up to 12 years without possessing a permanent certificate.[1] See Administrative Code 1973 AACS, R 390.1126 *et seq.*

It is, therefore, my opinion that the requirement of MCLA 340.582; MSA 15.3582, that one be a United States citizen to qualify for permanent certification as a school teacher is unconstitutional.

FRANK J. KELLEY,
Attorney General.

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[1] The present equivalent of the permanent certificate is the "continuing" certificate. See Administrative Code 1973 AACS, R 390.1132 *et seq.*