

Chapter I, Section 2 of the Municipal Finance Act includes school districts within the definition of "municipality" as regulated by the Municipal Finance Act [Act 202, P.A. 1943, title as amended by Act 20, P.A. 1944 Ex. Sess., being C.L. '48 and C.L.S. '61 §§ 131.1 *et seq.*; M.S.A. 1958 Rev. §§ 5.3188(1) *et seq.*] The same section defines "obligations" as

" . . . evidences of indebtedness such as bonds, refunding bonds, notes, certificates of indebtedness and other like instruments . . . issued by a municipality, which on their face pledge the full faith and credit of the municipality and/or are payable primarily from taxes and/or special assessments."

Chapter III, Section 1 of the Municipal Finance Act [C.L. '48 § 133.1; M.S.A. 1958 Rev. § 5.3188(6) ] provides that

"No municipality shall hereafter borrow money and/or issue any obligations payable out of taxes or special assessments except in accordance with the provisions of this act."

In *School District No. 9 v. McLintock*, 255 Mich. 197, the Supreme Court ruled that to incur an obligation, as by purchase of land upon land contract, is to incur indebtedness, and further that to incur indebtedness is to borrow money. Inasmuch as the borrowing of money by a school district is governed by the provisions of the Municipal Finance Act as above set forth, it must follow that the acquisition of any buildings under the provisions of Act 23 of the Public Acts of 1963 which obligates the school district to payment from funds of future fiscal years, other than current funds, constitutes a debt and as such is subject to the approval of the Municipal Finance Commission. This approval is required whether such an obligation is described as a purchase, as a lease or as a title retaining contract.

FRANK J. KELLEY,  
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CONSTITUTIONAL LAW: Equal protection of the laws.

CITIZENSHIP: Requirement for licensing.

BARBERS: Licensing.

Provision of section 10b(e), Act 382, P.A. 1927, as amended, requiring applicant for barber license to be citizen of the United States, is unconstitutional.

No. 4248

March 16, 1964.

Board of Examiners of Barbers  
702 Cadillac Square Building  
Detroit, Michigan

You have requested my opinion as to the authority of the Board of Examiners of Barbers to limit the issuance of licenses to citizens of the United States, in accordance with section 10b(e), Act 382, P.A. 1927, as amended,<sup>1</sup> which reads as follows:

<sup>1</sup> M.S.A. § 18.102; C.L.S. 1956 § 338.610b.

"Any person is qualified to receive a certificate of registration to practice barbering or hair cutting: \* \* \*

"(e) Who is a citizen of the United States and has been a resident of the state of Michigan for at least 6 months immediately prior to his application for a license; \* \* \*."

The original act licensing barbers contained the following language:<sup>2</sup>

"No person so examined shall receive such certificate who is at the time of such examination *an alien*: \* \* \*." (emphasis added)

The Michigan Supreme Court in 1902, in the case of *Templar v. State Board of Examiners of Barbers*<sup>3</sup> held section 5 to be repugnant to the Fourteenth Amendment of the United States Constitution as denying equal protection of the laws.

The legislature subsequently amended section 5 by Act 387, P.A. 1913, by specifically omitting any reference to citizenship requirements. When the present act, supra, was enacted in 1927, it contained no citizenship requirements. Nor did a 1933 amendment change them.<sup>4</sup>

In spite of the Supreme Court's clear pronouncement in the *Templar* case and the legislature's recognition of that holding through its prior amendatory action, nevertheless the 1937 legislature revived the citizenship requirement with the present language by means of Act 307. Subsequently an opinion by one of my predecessors on July 28, 1941<sup>5</sup> held this 1937 amendment to be unconstitutional in the light of the *Templar* case and other authorities cited therein.

Seven years later another opinion<sup>6</sup> held a similar section in the nursing law to be unconstitutional, citing the *Templar* case as authority. Soon thereafter the legislature removed that offensive language of the nursing law by amendment.<sup>7</sup>

However, the present barber licensing act, including section 10b, was amended for the last time by Act 165, P.A. 1951, but with the repugnant language still being retained.

I am in agreement with my predecessors, and it is my opinion that, regardless of its retention by the legislature, the citizenship requirement of the present act is unconstitutional upon the authority of the *Templar* case.

FRANK J. KELLEY,  
*Attorney General.*

<sup>2</sup> Section 5, Act 212, P.A. 1899; § 5215, Howell's Michigan Statutes.

<sup>3</sup> 131 Mich. 254.

<sup>4</sup> Act 106, P.A. 1933.

<sup>5</sup> O.A.G. 1941-42, No. 20579, p. 261.

<sup>6</sup> O.A.G. 1947-48, No. 705, p. 589.

<sup>7</sup> Act 137, P.A. 1952.