

The reasoning contained in OAG 1971-1972, No 4755, *supra*, is applicable here. It was therein concluded that the citizenship requirement must be tested for conformity to the equal protection provision of the Fourteenth Amendment to the Constitution of the United States which protection must be afforded to citizens and aliens alike. It was stated that:

"A legislative classification, such as one distinguishing between citizens and aliens, can be sustained only if it relates to the purpose of the act in which it is found. The purpose of the medical practice act is to protect the health and welfare of the people of this state by insuring that medical practitioners meet all the minimum requirements pertaining to education and practice. There is no rational basis for distinguishing between citizens and aliens for, if an alien applicant for licensure meets all of the requirements pertaining to education and practice contained in the medical practice act, the purpose of the act is served and the people of this state are assured that the individual applicant has met the requisite standards of competence."
(p 112)

The citizenship requirement of 1915 PA 115, *supra*, is equally lacking in rational basis.

Accordingly, it is my opinion that the citizenship requirement of section 2(1) of 1915 PA 115, *supra*, is unconstitutional as a denial of equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States. 2 OAG 1955-1956, No 2520, p 231 (April 23, 1956) is overruled.

FRANK J. KELLEY,
Attorney General.

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CONSTITUTIONAL LAW: Recall of Public Officers

ELECTIONS: Recall of Officers

SCHOOLS AND SCHOOL DISTRICTS: Recall of School Board Members

VILLAGES: Recall of Officers

Section 956 of the Michigan Election Law, 1954 P.A. 116, violates art 2, § 8 of the Michigan Constitution of 1963.

Opinion No. 4780

May 18, 1973.

Honorable John T. Bowman
State Senator
The Capitol
Lansing, Michigan 48901

You have asked for an opinion of the Attorney General concerning the signature requirements for the purpose of recalling a school board member.

Const 1963, art 2, § 8, provides that all elective officers other than judges of courts of record are subject to recall upon petition of electors

equal in number to 25% of the number of persons voting in the last preceding election for the office of governor in the electoral district of the officer sought to be recalled.

However, § 956 of the Michigan Election Law¹, MCLA 168.956; MSA 6.1956, provides that petitions calling for the recall of a village officer shall be signed by electors equal in number to 25% of the votes cast for village president at the last election, and that petitions calling for recall of officials of fractional school districts are to be signed by electors equal in number to 25% of the number of qualified electors assessed for school taxes.

The controlling issue, which is one of first impression², is whether the provision of the Michigan Election Law pertaining to recall of village and fractional school district officers is valid in view of the all-encompassing language of Const 1963, art 2, § 8.

Section 956 of the Michigan Election Law, *supra*, indicates a recognition by the legislature that voting precincts for gubernatorial elections are not coterminous with village boundaries or with the boundaries of fractional school districts and consequently it is difficult to determine with certainty how many votes were cast for governor in the village or school district if a precinct is divided by the village or school district boundary. The legislature has offered a pragmatic solution to the dilemma which confronts organizers of a recall petition drive when they are unable to determine the exact gubernatorial vote in the village or fractional school district and are consequently unable to determine the minimum number of signatures required to be on the petition. However, it is the opinion of the Attorney General that the legislature lacked the authority to make such provisions, that such are contrary to the state constitution, Const 1963, art 2, § 8, and are consequently invalid.

Const 1963, art 2, § 8, is clear and the legislature is not at liberty to impose requirements which are in conflict with a constitutional provision. *Hamilton v Secretary of State*, 227 Mich 111 (1924).

The Attorney General has ruled that a city charter provision permitting recall of city officials by petition signed by electors equal to at least 25% of all electors voting at the last preceding general election was contrary to the then applicable provisions of Const 1908, art 3, § 8, which established the *gubernatorial vote* in a specific district as the standard for determining the minimum number of signatures to be required on the recall petition. OAG 1945-1946, No 0-3062, p 190 (January 23, 1945).

It is therefore the opinion of the Attorney General that § 956 of the Michigan Election Law, *supra*, violates Const 1963, art 2, § 8, and is unenforceable. Petitions seeking the recall of officers of a village or fractional school district must, pursuant to § 955 of the Michigan Election Law, MCLA 168.955; MSA 6.1955, be signed by registered and qualified electors equal to at least 25% of the number of votes cast for candidates for the

¹ 1954 PA 116, MCLA 168.1 *et seq*; MSA 6.1001 *et seq*.

² Vol 9 of the Michigan Compiled Laws Annotated, in the annotation to MCLA 168.956, makes reference to a purported "Special Opinion of the Attorney General" dated June 27, 1963 which appears to pass upon this issue. However, such alleged special opinion does not in fact exist.

office of governor at the last preceding general election in the village or fractional school district.

If a precinct is situated only partially within the village or fractional school district the portion of the gubernatorial vote in the precinct to be allocated to the portion of the precinct within the village or fractional school district and to become part of the total gubernatorial vote of which 25% would constitute the minimum signature requirement for recall petitions should be determined by referring to applications for ballots in the divided precinct at the most recent election at which a Governor was elected. After reference to such records reveals the number of electors residing in the portion of the precinct within the village or fractional school district who actually cast ballots at the polls or by absentee ballot, such number must be reduced to reflect the number of electors who did not vote for any of the candidates for Governor. For example, if 400 voters, of whom 150 resided in the village or fractional school district, cast ballots but only 350 votes, or 87.5% of the ballots, were cast for gubernatorial candidates, the gubernatorial vote for the portion of the precinct within the village or fractional school district would be 131, or 87.5% of 150.

Election records must be retained only two years and gubernatorial elections occur every four years. We are advised that in the future the Department of State will instruct local election officials to retain the materials for divided precincts from one gubernatorial election until the next.

If the election materials from the 1970 gubernatorial election for a given municipality are no longer available it will be necessary for the local clerk to apportion the gubernatorial vote in split precincts in whatever manner he believes will best reflect the true distribution of the actual vote, taking into consideration the specific characteristics of the particular precinct.

FRANK J. KELLEY,
Attorney General.

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ARCHITECTS: Responsible supervision

PROFESSIONAL ENGINEERS: Responsible supervision

Responsible supervision of all construction is the practice of architecture and professional engineering.

Responsible supervision of all construction cannot be performed by a person not registered as an architect or a professional engineer.

Opinion No. 4626

May 25, 1973.

Mr. Jack Sharpe
Administrative Secretary
Board of Registration for Architects
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This is in response to your request for our opinion on certain questions relating to delegation of responsibility for supervision of construction. In