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ACCOUNTANCY: Certification as public accountant

The requirement that an applicant for full certification as a public accountant be a citizen of the United States is unconstitutional as a denial of equal protection of the law.

Opinion No. 4765

May 18, 1973.

Mr. Wayne Cunningham
Administrative Secretary
Board of Accountancy
1116 South Washington Avenue
Lansing, Michigan 48926

This is in response to your request for my opinion on the constitutionality of sections 15a and 21 of the accountancy statute, 1925 PA 353, as amended, being MCLA 338.501 *et seq*; MSA 18.1 *et seq*.

Section 15a requires applicants to be citizens or requires them to declare their intention of becoming a citizen before they may sit for the certified public accountants examination. That section reads:

“The board shall grant a certificate of examination to any person who:

“(a) At the time of writing the examination prescribed herein is a citizen of the United States or has duly declared his intention of becoming a citizen.

“(b) Is a resident of this state, has a place of business in this state or is employed in this state.

“(c) Is of good moral character.

“(d) Meets the educational requirements of section 16a.

“(e) Successfully passes a written examination in theory of accounts, accounting practice, auditing, commercial law as affecting public accounting and such other related subjects as the board determines appropriate.” MCLA 338.515a; MSA 18.15(1)

Section 21 allows resident aliens who have met all of the other requirements for certification except that of citizenship to practice under a certificate of authority, but prevents these persons from using the CPA designation. That section reads:

“The board shall require the same information from each applicant for a certificate of authority as it requires from an applicant for a certificate as a certified public accountant. Applicants for certificates of authority shall comply with the requirements of this act and the rules of the board, in so far as they are applicable. No certificate of authority shall be granted after January one [1], nineteen hundred twenty-six [1926], except as provided in section fifteen [15], to persons who have passed an examination as a certified public accountant and who have not yet secured their full citizenship papers. Certificates of authority confer the legal right to practice as a public accountant but do not confer any added title or designation.” MCLA 338.521; MSA 18.21

The Fourteenth Amendment to the Constitution of the United States decrees:

“. . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” US Const. Am XIV, § 1

Recently I ruled on the constitutionality of a similar provision of the real estate license law, 1919 PA 306, as amended, being MCLA 451.201 *et seq*; MSA 19.791 *et seq* [OAG 1972, No 4754 (November 9, 1972)], and the medical practice act, 1899 PA 237, as amended, being MCLA 338.51 *et seq*; MSA 14.531 *et seq* [OAG 1972, No 4755 (November 9, 1972)]. In the opinion considering the citizenship requirement of the medical practice act I said:

“It has long been held that the term “person” as used in the fourteenth amendment includes lawfully admitted resident aliens as well as citizens, and that equal protection of the law is afforded to citizens and aliens alike. (citations omitted)

“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.

“The Supreme Court of Michigan in *Templer v State Board of Examiners of Barbers*, 131 Mich 254 (1902), struck down the citizenship requirements in the barber act for the reasons cited above. In that opinion the court analogized that citizenship was no more important for licensure as a barber than the practice of medicine, stating:

“. . . We think it must be considered as settled that, in the protection of the public health, the legislature has the right to provide for an examination of all persons who seek to engage in the practice of medicine, and to have their qualifications passed upon by a properly constituted board. But the practice of medicine is no more an incident of citizenship than the practice of the trade of a barber. . . .” (p 257)

“Likewise this office has previously held as unconstitutional the citizenship requirement for licensure as a nurse, barber or practitioner of mortuary science.

“Accordingly, it is my opinion that section 3 of the medical practice act, which requires evidence of being either a citizen of the United States or having valid second naturalization papers for licensure, is unconstitutional as a denial of equal protection of the laws in violation

of the Fourteenth Amendment to the Constitution of the United States."

As stated above, a legislative classification 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 1925 PA 353, *supra*, in providing for the certification of public accountants is to protect the public against fraud, deception or the consequences of incompetence in the practice of accountancy by insuring that certified public accountants meet minimum education and experience standards. If an alien applicant meets all of the requirements for certification in this state except that of citizenship, the purpose of the accountancy statute is satisfied in that people dealing with a person certified by the Board are assured that the individual is qualified by virtue of his education and experience.

The fact that the accountancy statute allows the Board to allow aliens who have declared their intention of becoming citizens to practice under a certificate of authority but not to use the designation CPA does not sufficiently cure the constitutional defects in the statute. By denying a qualified individual the use of the designation CPA but allowing him to practice is still an unreasonable classification and is discriminatory. Such a classification is a denial of equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

You are hereby advised and it is my opinion that section 15a(a) of 1925 PA 353, which requires citizenship before the Board may grant full certification to practice as a public accountant in this state, is constitutionally invalid for the above mentioned reasons. Certificates of authority issued under section 21 of 1925 PA 353 should be converted to full certificates of certified public accountants since it is no longer constitutionally permissible to make citizenship a prerequisite for certification and to classify otherwise qualified aliens differently than citizens.

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Attorney General.
