It is clear from the above that, while county boards of health initially determine a rate for fees to be charged, the board of county commissioners have the final determination because of their power to revoke, enlarge or amend the initial determination. The only restraint is that the fees shall not exceed the cost to the county health department of performing the service.

Therefore, my answer to your third question is in the affirmative. That is, a board of county commissioners may regulate fees and charges of persons employed by the county board of health in executing health laws and their own regulations.

FRANK J. KELLEY,
Attorney General.

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HIGHWAYS AND ROADS: Studded Tires

CONSTITUTIONAL LAW: Equal Protections; Classification

Geographical division of state for purposes of regulating studded tires is constitutionally permissible where such division is based upon extreme winter snow and ice conditions prevailing in different areas of the state.

Statutory exclusion of vehicles driven by law enforcement officers and rural postmen in the course of their official duties does not constitute a denial of equal protection.

There is no exclusion from the statute prohibiting use of studded tires in certain areas of the state for vehicles coming from another area where such tires are permitted.

Opinion No. 4815 Sept. 6, 1974.

Honorable John T. Bowman
State Senator
The Capitol
Lansing, Michigan 48902

You have requested my opinion on several questions relating to 1973 PA 138 which amends 1949 PA 300, §710; the Michigan Vehicle Code, MCLA 257.710; MSA 9.2410. 1973 PA 138 reads, in pertinent part, as follows:

> "(a) A vehicle or special mobile equipment shall not be operated on the public highways of this state on metal or plastic track or on tires which are equipped with metal that comes in contact with the surface of the road or which have a partial contact of metal or plastic with the surface of the road, except as provided in subsections (c), (d) and (f).
>
> * * *
>
> "(c) A pneumatic tire may have embedded in it wire not to exceed .075 inches in diameter if so constructed that under no conditions shall the percent of metal in contact with the highway exceed 5% of the total tire area in contact with the roadway, except that during

the first 1,000 miles of use or operation of any such tire the metal in contact with the highway shall not exceed 20% of such area.

"(d) Pneumatic tires may have inserted ice grips or tire studs of wear-resisting plastic or metal material, installed in such manner as to provide resiliency upon contact with the road, with projections not to exceed 3/32 of an inch beyond the tread of the traction surface of the tire, and constructed to prevent any appreciable damage to the road surface. Pneumatic tires so equipped may be used on motor vehicles between December 1, 1973 and April 1, 1974 and between December 1, 1974 and April 1, 1975. Copies of this subsection shall be posted in all places at which tires are sold.

* * *

"(f) By January 1, 1974, the department of state highways shall promulgate rules establishing acceptable standards to permit tires with studs or other traction devices to be used on a street or highway after April 1, 1975. The rules shall make separate provision for the extreme winter snow and ice conditions of the Upper Peninsula and the northern Lower Peninsula. The rules shall include restrictions on the amount and dimension of protrusions that may be allowed on a tire, the type of material that may be used in a stud, traction device, or tire, and the amount of road wear that a tire with studs or other traction devices may cause on a street or highway.

"(g) U.S. rural postmen and all law enforcement officers shall be excluded from the provisions of section 257.710 of the Compiled Laws of 1970."

Your first question asks:

"What is the dividing line of the Northern Lower Peninsula?"

1973 PA 138, §710(f), *supra,* mandates that the department of state highways promulgate rules establishing acceptable standards to permit traction devices on streets and highways on or before April 1, 1975. Although rules for permitting traction devices (hereinafter referred to as studded tires) have not been promulgated and given effect as of this writing, the classification enumerated therein must reflect extreme winter snow and ice conditions. This classification may be accomplished by reference to factors such as annual snowfall, annual ice accumulation and any other climatic conditions which reflect extreme winter conditions.

Your second question reads:

"Under the equal protection clause of the Constitution, can we grant special privileges for the residents of one county on matters of public safety and prevent residents of another county from the use of the same public safety equipment?"

Section 1 of the Fourteenth Amendment to the United States Constitution provides in pertinent part:

". . . No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

Const 1963, art 1, §2, also affords equal protection to citizens of the State of Michigan. It provides:

"No person shall be denied the equal protection of the laws; . . ."

The purpose of the Equal Protections Clause was reviewed in *Rinaldi* v *Yeager,* 385 US 305, 308-309; 16 L Ed 2d 577, 580 (1966), wherein the United States Supreme Court said:

> "The Equal Protection Clause requires more of a state law than nondiscriminatory application within the class it establishes. McLaughlin v Florida, 379 US 184, 189-190, 13 L ed 2d 222, 226, 227, 85 S Ct 283. It also imposes a requirement of some rationality in the nature of the class singled out. To be sure, the constitutional demand is not a demand that a statute necessarily apply equally to all persons. 'The Constitution does not require things which are different in fact . . . to be treated in law as though they were the same.' Tigner v Texas, 310 US 141, 147, 84 L ed 1124, 1128, 60 S Ct 879, 130 ALR 1321. Hence, legislation may impose special burdens upon defined classes in order to achieve permissible ends. But the Equal Protection Clause does require that, in defining a class subject to legislation, *the distinctions that are drawn have 'some relevance to the purpose for which the classification is made.'* Baxstrom v Herold, 383 US 107, 111, 15 L ed 2d 620, 624, 86 S Ct 760; Carrington v Rash, 380 US 89, 93, 13 L ed 2d 675, 678, 85 S Ct 775; Louisville Gas Co. v Coleman, 277 US 32, 37, 72 L ed 770, 773, 48 S Ct 423; Royster Guano Co. v Virginia, 253 US 412, 415, 64 L ed 989, 990, 40 S Ct 560." (Emphasis supplied)

In *Reed* v *Reed,* 404 US 71, 75-76; 30 L Ed 2d 225, 229 (1971), the Court reiterated the aforementioned analysis by stating:

> "In applying that [equal protection] clause, this Court has consistently recognized that the Fourteenth Amendment does not deny to States the power to treat different classes of persons in different ways. [Citations omitted] The Equal Protection Clause of that Amendment does, however, deny to States the power to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute. *A classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.'* Royster Guano Co. v Virginia, 253 US 412, 415, 64 L Ed 989, 990, 40 S Ct 560 (1920). . . ." (Emphasis supplied)

The Michigan Supreme Court has also ruled that equal protection of the laws does not require equality of operation or application to all citizens but instead requires equality in the particular class affected. *Tomlinson* v *Tomlinson,* 338 Mich 274; 61 NW2d 102 (1953). The Court has also indicated reasonable classifications are permissible if they apply to all persons within a class and if reasonable grounds exist for deciding the applicability of the class. *Godsol* v *Michigan Unemployment Compensation Commission,* 302 Mich 652; 5 NW2d 519 (1942).

Based on the aforementioned, I must conclude that the legislative classification concerning the use of studded tires on streets and highways is sustainable and is not in derogation of the equal protection clauses of the United States and Michigan Constitutions. The classification discussed herein is reasonable inasmuch as climatic criteria alone will establish areas in which studded tires may be used. Therefore, I am of the opinion that such a classification has " '. . . some relevance to the purpose for which the classification is made.' " *Baxstrom* v *Herold,* 383 US 107, 111, 15 L Ed 2d 620, 624, 86 S Ct 760; *Carrington* v *Rash,* 380 US 89, 93, 13 L Ed 2d 675, 678, 85 S Ct 775; *Louisville Gas Co* v *Coleman,* 277 US 32, 37, 72 L Ed 770, 773; 48 S Ct 423; *Royster Guano Co* v *Virginia,* 253 US 412, 415, 64 L Ed 989, 990, 40 S Ct 560, and is sustainable.

Your third question reads:

> "Can the legislature grant postmen and law enforcement officers certain safety features on an automotive vehicle and deny those same safety features to doctors, firemen, school districts using school buses for transportation of school children, etc.?"

The state legislature, in enacting 1973 PA 138, has determined it necessary and desirable to exclude U.S. postmen and all law enforcement officers from the provisions of §710 of the Michigan Vehicle Code, MCLA 257.710; MSA 9.2410. The ability of the legislature to exclude certain groups or areas from legislative enactments is well-established. In *McGowan* v *Maryland,* 366 US 420, 6 L Ed 2d 393, 81 S Ct 1101 (1961), the United States Supreme Court was asked whether a Maryland criminal statute, commonly known as a Sunday Closing Law, was constitutionally infirm due to the fact that an exemption for Sunday sales was provided for retailers selling merchandise essential to, or customarily sold at, or incidental to, the operation of bathing beaches, amusement parks or other recreational facilities. The Supreme Court said ". . . But we have held that the Equal Protection Clause relates to equality between persons as such, rather than between areas and that territorial uniformity is not a constitutional prerequisite. . . ." This conclusion is applicable to the question of whether U.S. rural postmen and law enforcement officers can be excluded from §710 of the Michigan Vehicle Code, *supra.* The provision must be interpreted as an exclusion which does not apply to certain persons, but applies to vehicles operated in the course of performing certain official duties. See: *In re State Highway Commission,* 383 Mich 709, 714; 178 NW2d 923 (1970). Based on the aforementioned, it is my conclusion that your third question must be answered in the affirmative.

With respect to your fourth question, which reads:

> "If an owner of a vehicle equipped with studded snow tires in the exempt zone drove into the non-exempt zone, would that owner be required to change tires at the dividing line or be in violation of the law and subject to the penalties of the law?"

I must respond by noting that the legislature included no provisions for contingencies as you raised. There is no exclusion from the statute pro-

hibiting use of studded tires in certain areas of the state for vehicles coming from another area where such tires are permitted.

FRANK J. KELLEY,
Attorney General.

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BARBERS: Six months residency requirement.

CONSTITUTIONAL LAW: Residency requirements.

The statutory provision requiring 6 months residency as a condition to application for licensure as a barber is unconstitutional.

Opinion No. 4830 October 2, 1974.

Board of Barber Examiners
1033 South Washington Avenue
Lansing, Michigan 48926

You have requested my opinion as to the constitutionality of the 6 months' residency requirement contained in 1968 PA 355; MCLA 338.1601 *et seq.*; MSA 18.117(1) *et seq.* Section 8 provides in part as follows:

> "The board shall not issue an original license under this act until the applicant submits proof that he has been a resident of the state for at least 6 months immediately prior to his application for a license. . . ." MCLA 338.1608; MSA 18.117(8)

In my opinion, and for the reasons set forth below, the durational residency requirement is invalid as a denial of equal protection under the Fourteenth Amendment to the United States Constitution.

Clearly, section 8 of the barber act, *supra,* establishes two classes of residents, one of which is qualified for licensure and one of which cannot be considered for licensure. In determining the validity of classifications under the equal protection clause the first task is to determine by what standard the classification will be judged.

The traditional test is set forth in *Naudzius* v *Lahr,* 253 Mich 216, 222, 223; 234 NW 581, 583 (1931), as follows:

> " '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