



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

November 16, 1976

ATTORNEY GENERAL OPINION NO. 76- 347

L. D. Jernigan, D.V.M.
Secretary-Treasurer
Kansas Board of Veterinary Examiners
Council Grove, Kansas 66846

Re: Veterinarians--Qualifications--Citizenship

Synopsis: Fourteenth Amendment to United States Constitution prohibits classification premised solely on alienage without reasonable basis therefor. Citizenship requirement in K.S.A. 47-824 is constitutionally impermissible.

* * *

Dear Dr. Jernigan:

You request an opinion from this office relative to the procedural application of the United States citizenship requirement for licensure to practice veterinary medicine in the state of Kansas. K.S.A. 47-824 provides, *inter alia*, that an applicant for such licensure must be "a citizen of the United States or an applicant for citizenship." Essentially your question concerns the steps which a foreign national may undertake to meet the citizenship requisite. It would appear propitious in light of several recent decisions of the United States Supreme Court that we defer your specific query and instead address directly the constitutional issue posed by such licensure requirements.

It is well established that an alien in this country is entitled to the shelter of the Equal Protection Clause of the Fourteenth

Amendment.¹ And, as Mr. Justice Hughes stated in *Traux v. Raich*, 239 U.S. 33, 41, 60 L. Ed. 131, 36 S. Ct. 7 (1915) such protection also extends to those aliens who "work for a living in the common community." While the net effect of these observations by the Court did not entirely prohibit states from employing statutory language for professional licensing which in one form or another resulted in separate classifications based on alienage, it did require that if such classification was desired by the states they must therefore meet the traditional test mandated by the Fourteenth Amendment, *i.e.*, a state must demonstrate a reasonable basis for any classification which is premised solely upon alienage.² The Court has further pointed out that these classifications, because they are inherently suspect (of denying equal protection), should be subject to close judicial scrutiny. *Graham*, 403 U.S. at 372. So, a state's authority to apply its laws exclusively to its alien inhabitants as a class must be confined within narrow limits. *Takahasi v. Fish and Game Commission*, 334 U.S. 410, 420, 92 L. Ed. 1478, 68 S. Ct. 1138 (1948).

Examining the classification created by K.S.A. 47-824 in light of the above constitutional limitations raises the question whether this licensing prerequisite supported by a reasonable state interest in denying an alien license to practice veterinary medicine in this state. Previously this office has examined a question parallel to that here presented regarding the citizenship requirements promulgated by the Legislature for the practice of medicine. In that opinion we stated in the absence of evidence establishing a reasonable state interest that

"to require a noncitizen who is otherwise eligible for licensure by endorsement to submit to different procedural requirements

1. *Sugarman v. Dougall*, 413 U.S. 634, 37 L. Ed. 2d 853, 93 S. Ct. 2842 (1973); *Graham v. Richardson*, 403 U.S. 365, 29 L. Ed. 2d 534, 91 S. Ct. 1848; *Yick Wo v. Hopkins*, 118 U.S. 356, 30 L. Ed. 220, 6 S. Ct. 1064 (1886).

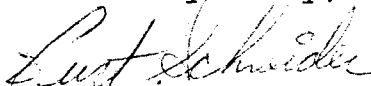
2. *Lindsley v. National Carbonic Gas Co.*, 220 U.S. 61, 55 L. Ed. 369, 31 S. Ct. 337 (1911); *Williamson v. Lee Optical Co.*, 348 U.S. 483, 99 L. Ed. 563, 75 S. Ct. 461 (1955); *Mouy v. Doud*, 354 U.S. 457, 1 L. Ed. 2d 1485, 77 S. Ct. 1344 (1957); *McGowan v. Maryland*, 366 U.S. 420, 6 L. Ed. 2d 393, 81 S. Ct. 1101 (1961).

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for issuance of a license by the Board to practice medicine in this state, and to impose different requirements *solely* because of citizenship of the applicant, constitutes a denial of the equal protection of the laws."³

As was the case presented in the above opinion this office has not been apprised of any reasonable state interest secured by the enforcement of the United States citizenship requirement. Accordingly we are constrained to conclude in light of *Sugarman* and *Graham* that requiring United States citizenship pursuant to K.S.A. 47-824 would abridge an alien's right to equal protection as guaranteed by the Fourteenth Amendment. Our advice to the Board therefore is that it may now begin processing the alien's application for a license to practice veterinary medicine providing all other requirements applicable to United States citizens have been met.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JPS:kj

Enclosure

cc: Alberto Davidovich, D.V.M.
C-3 Jardine Terrace
Manhattan, Kansas 66502

3. Attorney General Opinion dated December 8, 1972, and addressed to Robert D. Loughbom, Esq. A copy is enclosed herewith for your information.