



STATE OF KANSAS

## Office of the Attorney General

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Attorney General

February 8, 1978

ATTORNEY GENERAL OPINION NO. 78- 60

The Honorable Ardena Matlack  
Chairwoman  
Federal and State Affairs Committee  
3rd Floor - State Capitol  
Topeka, Kansas 66612

Re: Constitutional Law--Discrimination--Citizenship

Synopsis: 1978 House Bill 2930, prohibiting the ownership of real property in the State of Kansas by noncitizens, would, if enacted, be insupportable under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

\* \* \*

Dear Representative Matlack:

You request my opinion concerning 1978 House Bill 2930. Section 1 provides that "[n]o person who is not a citizen under the laws of the United States shall acquire title to, own, lease for more than fifty (50) years or hold in trust any land within this state." Certain ownership is excepted from the prohibition, under three circumstances: when protected by a treaty between this country and the country of which the owner is a citizen, ownership in effect on the effective date of the act, and ownership of land used as a residence of less than 160 acres lying outside the corporate limits of a city or one acre lying within such limits.

Section 2 imposes a similar prohibition against the ownership of land by business entities in which noncitizens hold any interest whatever, subject to certain exceptions not pertinent to this opinion.

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Section 3 directs the county attorney or district attorney in which any such land is located in violation of the provisions of the bill to "request the clerk of the district court of such county to issue an order of sale of such land." Upon issuance of this so-called "order," the "appropriate officer," who is unspecified, is to "levy and execute" the order, presumably, by sale of the land.

You do not specify a particular question concerning this bill. However, presumably, you question whether the state may constitutionally prohibit the ownership of property by certain persons on the sole basis of their alienage. In *Sugarman v. Dougall*, 413 U.S. 634, 37 L. Ed. 2d 853, 93 S. Ct. 2842 (1973), the Court stated in pertinent part thus:

"It is established, of course, that an alien is entitled to the shelter of the Equal Protection Clause. . . . This protection extends, specifically, . . . to aliens who 'work for a living in the common occupations of the community.'

\* \* \*

"In *Graham v. Richardson*, 403 U.S. at 372, 29 L. Ed. 2d 534, we observed that aliens as a class 'are a prime example of a "discrete and insular" minority . . . and that classifications based on alienage are 'subject to close judicial scrutiny.' And as long as a quarter century ago we held that the State's power 'to apply its laws exclusively to its alien inhabitants as a class is confined within narrow limits.' . . . We therefore look to the substantiality of the State's interest in enforcing the statute in question, and to the narrowness of the limits within which the discrimination is confined." 413 U.S. at 641, 642.

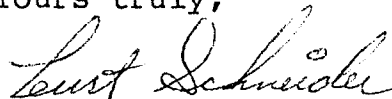
It is impossible to determine from the language of the bill itself what substantial and legitimate state interest the bill is designed to serve. The prohibition against the ownership of real property by noncitizens is extremely broad, and effectively prohibits any person who is not a citizen of the United States from acquiring

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real property in this state after the effective date of the act, except for residential purposes, and in that instance, the property so acquired may not exceed 160 acres outside any incorporated city, and one acre within any city corporate limits. The prohibition is broadly and blatantly discriminatory, and it is difficult to conceive of any legitimate and substantial public interest of the state which is sufficiently compelling to justify such a drastic classification.

It may be argued by some that the discriminatory effect of the bill is nullified by section 3, which compels the sale of property held in violation of the act and provides for the proceeds thereof to be paid to the alien owner or owners. This provision does not mitigate the plain discrimination of the prohibition against ownership in the first instance, however. In my judgment, the bill is entirely insupportable and unconstitutional on its face.

Yours truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj