



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**CRAWFORD C. MARTIN  
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August 14, 1969

Mrs. Marjorie Taber Ogle  
Executive Secretary  
Board of Vocational Nurse  
Examiners  
Austin, Texas

Opinion No. M-447

Re: Validity of Art. 4528c,  
Sec. 5(a), V.C.S., limit-  
ing licenses of vocational  
nurses to United States  
Citizens.

Dear Mrs. Ogle:

We refer to your recent request which in effect re-  
quests this office to answer the following question:

"May the Board of Vocational Nurse Examiners  
issue a nurse's license to a foreign person  
having a presence in the United States other  
than by citizenship or declaration to become  
one?"

The Attorney General's Office has heretofore, in  
Opinion dated June 1, 1939, No. 0-866, and affirmed by Opinion  
No. R-2247, dated December 7, 1950, passed on the question as  
to whether or not medical licenses could be limited to citizens  
of the United States; and in each instance held that such a  
limitation violated the provisions of the Fourteenth Amendment  
to the Constitution of the United States as well as the Con-  
stitution of Texas. We find the question posed in your request  
analogous to the question answered in the prior opinions.

Article 4528c, V.C.S., along with certain other specific  
qualifications, requires that the applicant ". . . is a  
citizen of the United States or has made a declaration of  
intention of becoming a citizen. . ."

A succinct statement of the law, by various text  
writers, covering the issuance of licenses, by states, to  
aliens, is as follows:

"The constitutional guaranty of equality  
invalidates laws denying to aliens the right  
to obtain licenses to pursue ordinary callings.

The power of the state to make reasonable classifications in legislating to promote the health, safety, morals and welfare of those within its jurisdiction does not go so far as to make it possible for the state to deny lawful inhabitants, because of their race or nationality, the ordinary means of earning a livelihood. Am.Jur.2d 886, Aliens and Citizens.

"In the enactment of license laws, the state must observe the equal 'protection' clause of the Federal Constitution, which corresponds to the provisions of the Constitution of the State of Texas guaranteeing equality of rights to all persons. The guaranty of the Fourteenth Amendment is applicable to all persons within the territorial jurisdiction of the state, including aliens." 27 Tex.Jur., 874, License, Sec. 27.

The term "any person" as used in the Fourteenth Amendment has been construed to include aliens. Truax v. Raich, 239 U.S. 33 (1915); Colyer v. Skeffington, 265 Fed. 17 (D.C. Mass., 1920).

In passing upon the validity of an Arizona statute requiring employers hiring more than five employees to employ not less than 80 per cent qualified electors or citizens of the United States or some subdivision thereof, the Supreme Court of the United States in Truax v. Raich, cited above, stated at p. 42:

"The authority to control immigration--to admit or exclude aliens--is vested solely in the Federal Government. Fong Yue Ting v. United States, 149 U.S. 698, 713. The assertion of an authority to deny to aliens the opportunity of earning a livelihood when lawfully admitted to the state would be tantamount to the assertion of the right to deny them entrance and abode, for in ordinary cases they cannot live where they cannot work. And, if such a policy were permissible, the practical result would be that those lawfully admitted to the country under the acts of Congress, instead of enjoying in a substantial sense and in their full scope the privileges conferred by the admission,

would be segregated in such of the states as chose to offer hospitality."

In the case of Wormsen v. Moss, 29 N.Y.S.2d 798, 803, 804 (1941), we find an excellent discussion by the Court, amply supported by citations, of the right of a state to deny or issue license for various occupations where the applicants are aliens, and reads as follows:

"The Fourteenth Amendment to the Constitution is not confined to the protection of citizens. It applies to all persons within the territorial jurisdiction, without regard to differences of race, creed, color and nationality. Yick Wo v. Hopkins, 118 U.S. 356, 369, 6 S.Ct. 1064, 30 L.Ed. 220. Thus the alien, like the citizen, has the right to engage in a lawful occupation. If the calling is one that the State, in the exercise of its police power, may prohibit either absolutely or conditionally, by the exaction of a license, the fact of alienage may justify a denial of the privilege. But even then, there must be some relation between the exclusion of the alien and the protection of the public welfare. People v. Crane, supra, 214 N.Y. at page 169, 108 N.E. 427. Classification as between citizens and aliens is permissible, but the classification must have some reasonable basis in the welfare of the community. Miller v. City of Niagara Falls, 207 App.Div. 798, 202 N.Y.S. 549; Magnani v. Harnett, supra. Thus, in a case involving a state statute which restricted licenses for barbers to citizens of the United States, the court said: 'In the present case the relator's business is in no way injurious to the morals, the health, or even the convenience of the community, provided only he has the requisite knowledge upon the subjects prescribed by the legislature to practice his calling without endangering the health of his patrons. To hold that he is not entitled to practice this calling, because not a full citizen of the United States, is to deny to him rights which we think are preserved by the fourteenth amendment.' Templar v. State Board of Examiners of Barbers, 131 Mich. 254, 258, 90 N.W. 1058, 1060, 100 Am. St.Rep. 610. The reasoning of that case is

peculiarly applicable to that of the petitioner Larsen-Bak. Moreover, clear evidence of the fact that there is no relation here between the exclusion of an alien and the public welfare, is to be found in the recent enactment by the City Council New York City Local Laws No. 52-1941, effective June 30, 1941. That law lifted the restriction of the so-called Lyons Residence Law for a limited time so as to permit the employment of alien declarant doctors, internes and nurses in city hospitals. If the public interest furnishes no reason for their exclusion from public service, it cannot furnish such a reason for the exclusion of a declarant massage operator who seeks to pursue a private calling."

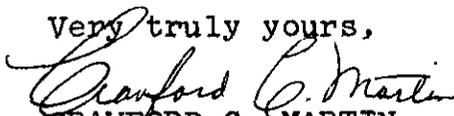
The only Texas authority we find in support of the above position is the case of Poon v. Miller, 234 S.W. 573 (Tex.Civ. App. 1921, no writ), in which case the court cited with approval the case of Templar v. Board of Examiners, 90 N.W. 1058 (Mich. Sup. 1902), which held that a statute that denied the right to a certificate as a licensed barber to any alien was unconstitutional under the provisions of the Fourteenth Amendment.

While aliens are not entitled to all of the privileges of citizens, we have found no authority to support the denial of the right to take the examination for a licensed vocational nurse, and upon making a satisfactory grade thereon, is entitled to be licensed as a vocational nurse in the State of Texas and the granting of the license cannot be denied because such person is not a citizen of the United States nor has made a declaration of intention of becoming a citizen. Therefore, we answer the question presented in the affirmative.

#### S U M M A R Y

The Board of Vocational Nurse Examiners may issue a license to an alien, lawfully in the United States, who possess all of the other qualifications set forth in Art. 4528c, Sec. 5(a), V.C.S., and who has successfully passed the required examination, even though such person has not made a declaration of intention of becoming a citizen.

Very truly yours,

  
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