should not be made eligible for discharge of the broad field of duties in the positions of government, subject to the Personnel Act.

While it is the inherent charitable nature of our citizens generally to be responsible for the well being of those who are permitted the privilege of residence in our country, it must further be presumed that for proper qualifications for services in the branches of government, such as are enumerated in the Act, that they should be qualified at least by possessing the comparatively elementary knowledge required for naturalization as a United States citizen.

Some of the menial duties of employees of State Institutions could possibly be best filled by those in alien classification and of lesser literate character, but since consideration of those must mean consideration for all, it may result in jeopardy to precious information of government and misused by aliens with subversive intentions. It would be difficult to attempt to alter, qualify or make ambiguous the intention of the Legislature in the expressive use of the word "citizen". A reference to Webster discloses that alien is defined as "one who does not possess the privileges of a ‘citizen’", and as the exact antonym of the word ‘citizen’, Webster gives "alien”.

In view of the foregoing, it is my opinion that your inquiry should be answered in the negative; that the Act is not available to aliens.

OFFICIAL OPINION NO. 58

July 11, 1951.

Mr. Frank T. Millis,
Auditor of State,
State House,
Indianapolis, Indiana.

Dear Sir:

Your letter has been received requesting an official opinion on the following questions:

“(1) Will the Auditor of State be in contempt of the recent court ruling of Judge Niblack who ruled
that the school distribution must be made on the 1951 Act, if distribution is made on the certification of the Superintendent of Public Instruction, Mr. Young, who certified May 26, 1951 using the 1949 Act as a basis for the said distribution?

“(2) Should the distribution be made on the 1949 Act while the court decision is on appeal to the higher courts, with the provision that if the higher court upholds Judge Niblack’s decision a supplemental distribution could be made?”

The aforesaid action is one for a declaratory judgment as to whether or not the August 1, 1951 distribution of state support for teachers salaries in the public school system shall be computed on the basis of the 1949 or the 1951 Teacher’s Minimum Salary Act.

The decretal portion of Judge Niblack’s order reads as follows:

“IT IS THEREFORE, considered, ordered, adjudged and decreed by the Court, that the Plaintiff-Relator and all local school corporations similarly situated, are entitled to receive on or before August 1, 1951, a distribution of funds from the Auditor of the State of Indiana pursuant to Chapter 247 of the Acts of 1949 and Section 2 (e) of Chapter 217 of the Acts of 1951. That said plaintiff-Relator and all school corporations similarly situated, are entitled to have said distribution of funds to be made by the Auditor of the State of Indiana, based upon computations and calculations specified in the formula provided in Chapter 247 of the Acts of 1949, and under Rules and Regulations of the Commission on General Education of the Indiana State Board of Education, which were in effect on March 5, 1951; and entitled to have all of said computations and calculations made in accordance with the terms of the Minimum Salary Law of the State, namely; Chapter 293 of the Acts of 1951.

“It is further considered, ordered, adjudged and decreed by the Court, that it is the duty of the State Superintendent of Public Instruction to certify from
the records in his office, to the Auditor of State, on or before July 1, 1951, for the purpose of making said distribution on August 1, 1951, for the fiscal year 1951-1952, the number of units, as provided in Chapter 247 of the Acts of 1949, and the Rules and Regulations of said Commission on General Education in effect on March 5, 1951, for which each local school corporation qualifies and the average minimum salary of the instructors of each such corporation, computed and calculated in accordance with Chapter 293 of the Acts of 1951.

"It is further considered, ordered, adjudged and decreed by the Court, that it is the duty of the State Board of Finance to order the Auditor of the State of Indiana to transfer, from the General Funds of the State Treasury to the State School Tuition Fund, such amount of money as may be necessary for said distribution on August 1, 1951, as and upon the basis as herein stated."

In the case of Brindley v. Meara (1935), 209 Ind. 144, 198 N. E. 301, the court held that our Declaratory Judgment Act (Section 3-1101 et seq., Burns Rev. Statutes, 1946 Replacement) is restricted by the contents of its title to a declaration of rights, status and other legal relations, and that no provision is specified or contemplated by the Act for the specific performance or enforcement of the court's decree of declaratory judgment, by any proceeding taken in such original declaratory judgment statute.

The above decision of the Supreme Court clearly infers that the enforcement of such right or status when so determined by declaratory judgment action should be by using other appropriate actions, such as a suit upon said declaratory judgment and in which new action the question of rights or status so previously determined would not be subject to judicial review. In support of the foregoing also see Smith v. Mercer (1948), 118 Ind. App. 575, 581.

In addition to the foregoing the judgment in the present instance rendered by the Marion Superior Court, Room No. 1, is pending an appeal to the Appellate Court of Indiana for probable final review by the Indiana Supreme Court.
However, when the aforesaid judgment becomes final on appeal, the following expression of the Indiana Supreme Court in the case of Department of Financial Institutions et al. v. General Finance Corporation (1949), 227 Ind. 373, 86 N. E. 2d 444, clearly expresses the view of said court as to the force and effect of a declaratory judgment upon state officers. The court said on page 381 of the original opinion:

"The finding of the trial court was that the facts alleged in the complaint were true. The appellee had a present substantial interest in the relief sought, and there was in existence a real and material controversy which should be decided in order to safeguard the appellee's rights. Zoercher v. Agler (1930), 202 Ind. 214, 172 N. E. 186, 907, 70 A. L. R. 1232. The fact that the court did not grant the injunction gives no cause for complaint to the appellants. The judgment decided the issues in controversy. 'The idea that it is necessary for one branch of the government forcibly to restrain or punish another branch or instrument of the government, in order to achieve respect for the declared law, is anomalous. In a recent case (Tirrell v. Johnston, Attorney-General (1934), 86 N. H. 530, 171 AtI. 641, 642), Chief Justice Peaslee for the New Hampshire Supreme Court in refusing to enjoin the attorney-General from criminally prosecuting the plaintiff for purported violation of a tax statute, but in approving the substitution of a prayer for a declaratory judgment, remarked:

"'When the law is settled it will be obeyed. It is therefore immaterial whether the proper proceeding is an application for a restraining order or a petition for a declaratory judgment. A final interpretation of the law in either form of proceeding would be binding upon these parties.'"

"The simplest way is the best way to bring to judicial determination the challenged validity of governmental action allegedly violating individual rights; and experience has shown that the declaratory judgment serves that purpose admirably * * *" Borchard, Declaratory Judgments 967 (2d Ed.)."
1. From the foregoing and in answer to your question No. 1 I am of the opinion that the Auditor of State would not be in contempt of said declaratory judgment if the August 1, 1951 distribution be made on the certification of the Superintendent of Public Instruction who uses the 1949 Act as a basis for computing said distribution. That if said judgment is affirmed by the Indiana Appellate or Indiana Supreme Court on appeal the Auditor of State would be required by original or supplemental distribution to make such August 1 distribution conform to the requirements of the 1951 Teacher's Minimum Salary Act.

2. In answer to your second question, I am of the opinion said distribution could be made on August 1, 1951, on the basis of the 1949 Teacher's Minimum Salary Act providing no school corporation received more money than it would be entitled to on a distribution computed on the basis of the 1951 Teacher's Minimum Salary Act. And that if said lower court's decision is affirmed by the Appellate and Supreme Court of Indiana that the Auditor of State would be required to make a supplemental distribution computed on the basis of the 1951 Teacher's Minimum Salary Act or to be subject hence to an action based upon said declaratory judgment.

OFFICIAL OPINION NO. 59

July 20, 1951.

Honorable Wilbur Young,
Superintendent of Department
of Public Instruction,
State House,
Indianapolis, Indiana.

Dear Sir:

Your request of June 21, 1951, for an official opinion reads as follows:

"1. A teacher had indefinite contract status with the North Judson-Wayne Township Consolidated Schools before August 1, 1948. On this date, this corporation was merged into a new consolidation known as the North Judson Consolidated Schools under the