An examination of Rule No. 32 and reference to in your letter shows that a Teacher-Clerk meeting the requirements of said rule, may be issued one of the Teacher-Clerk certificates authorized by such rule. Said rule does not require any such certificate before such duties of Teacher-Clerk could be performed in the local school corporation. Also, there is no statute making such a certificate a prerequisite for the performance of the duties and functions of such position. It is, therefore, clear that such Teacher-Clerks are not teachers within the meaning of the above statute. While, as a matter of policy, because of the vocational or professional parallels a minimum salary schedule might be respected, it cannot be considered that such payments of minimum salaries are compulsory and required under the Act.

The foregoing obviates the requirement of an answer to your second question. However, it might be well to point out that, in my opinion, even if there was a legal requirement for such certificate or license prior to the performance of such duties, the experience of the person in such position prior to the obtaining of a required license would not count for such salary purposes unless specifically provided by statute. This question was ruled upon by this office as to public school librarians, public school nurses and public school attendance officers being entitled to service credit in the Teachers' Retirement Fund for years in which they served prior to statutes authorizing membership in such fund, and it was held in Official Opinion No. 1, 1946 Ind. O. A. G., page 1, that in such case such person could not claim credit for such prior service.

OFFICIAL OPINION NO. 91
October 8, 1951.

Mr. Robert M. Reel,
Executive Secretary,
Indiana Real Estate Commission,
1433 North Meridian Street,
Indianapolis, Indiana.

Dear Mr. Reel:

Your request for an official opinion in substance is as follows:

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Does the Indiana Real Estate Commission have authority to issue a license to a citizen of Canada who resides in the State of Indiana.

Section 1 of Chapter 211, Acts of 1945, reads as follows:

"Be it enacted by the General Assembly of the State of Indiana, That section 1 of the above entitled Act be amended to read as follows: Section 1. That it shall be unlawful for any foreign person, firm, partnership, association, copartnership or corporation, not having and maintaining a bona fide office in the State of Indiana, or not being a resident freeholder of the State of Indiana for a compensation or valuable consideration, to sell or offer for sale, buy or offer to buy or negotiate the purchase or sale or exchange of real estate within the State of Indiana, either directly or indirectly, without a license therefor, to be issued by the auditor of state of the State of Indiana."

Although much of this Act appears to have been superseded by Chapter 44, Acts of 1949, the 1945 Act is cited as evidence that the Legislature has made no effort to bar alien residents from engaging in the business of a real estate broker in the State of Indiana.

The Fourteenth Amendment to the United States Constitution guarantees the equal protection of the laws to alien residents of the United States. Attention is called to the following comment from 2 Am. Jur. "Aliens", Section 10, to-wit:

"Alien inhabitants of a state are entitled to the guaranty of the Fourteenth Amendment that no state shall 'deny to any person within its jurisdiction the equal protection of the laws'. While an alien is not entitled to the privileges and immunities of a citizen, strictly as such under this provision, yet he is a 'person' to whom the state cannot deny the equal protection of the laws. This clause is universal in its application to all persons within the territorial jurisdiction, without regard to any differences of race, color or nationality. It must be observed, however, that this constitutional guaranty of the equal protection of the
law applies only to aliens within the jurisdiction of the United States.

Attention is called to the following comment from 2 Am. Jur. "Aliens", Section 13, to-wit:

"A statute which arbitrarily prohibits aliens from engaging in ordinary kinds of business is unconstitutional. However, discrimination against aliens in the granting of a license to maintain a business which, though lawful, is subject to abuse and likely to become injurious to the community, is based upon a lawful legislative classification, since it is not unreasonable to suppose that the foreign born, whose allegiance is first to their own countries, and whose ideals of governmental environment and control have been engendered and formed under entirely different regimes and political systems, have not the same inspiration for the public weal, and are not as well disposed toward the United States as those who, by citizenship, are a part of the government itself. Thus, there is no question but that a state's denial, to persons not citizens of the United States, of the right to obtain licenses to sell intoxicating liquors is not an unlawful discrimination against aliens or an abridgment of their rights within the prohibition of the Fourteenth Amendment of the Federal Constitution."

It does not appear that the business or profession of real estate broker or salesman is such as to come within the objections of the foregoing section.

It has been held that a statute prohibiting the issuance of a barber's license to an alien was violative of the Fourteenth Amendment of the United States Constitution.


In the case of Anton v. Van Winkle (1924) U. S. District Court (Oregon) 297 Fed. 340, the Court said:

"(2) Plaintiff, along with citizens of the United States, has the right to work and so employ himself as to gain a livelihood. Primarily, he has the same right and privilege as citizens under similar conditions to
engage in useful gainful employment and occupations, unless they pertain to the regulation or distribution of the public domain, or to the common property or resources of the people of the state, or the devolution of real property, or pertain to public works or benefits to be received from public moneys, as illustrated by the case of McCready v. Virginia, 94 U. S. 391, 396 24 L. Ed. 248; Patsone v. Pennsylvania, 232 U. S. 138, 145, 146, 34 Sup. Ct. 281, 58 L. Ed. 539; Hauenstein v. Lynham, 100 U. S. 483, 25 L. Ed. 628; Blythe v. Hinckley, 180 U. S. 333, 341, 342, 21 Sup. Ct. 390, 45 L. Ed. 557; Heim v. McCall, 239 U. S. 175, 36 Sup. Ct. 78, 60 L. Ed. 206, Ann. Cas. 1917B, 287; and perhaps to other similar regulations and relations. See Truax v. Raich, 239 U. S. 33, 39, 40, 36 Sup. Ct. 7, 60, L. Ed. 131, L. R. A. 1916D, 545, Ann. Cas. 1917D, 283.”

Therefore, in my opinion, your question should be answered in the affirmative.

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OFFICIAL OPINION NO. 92

October 11, 1951.

Mr. Otto K. Jensen,
State Examiner,
State Board of Accounts,
Room 304, State House,
Indianapolis 4, Indiana.

Dear Sir:

Your request for an official opinion reads as follows:

“Attached is an excerpt from the Municipal Code of a second class city. Section 4 contemplates that whenever owners of property fail to cut weeds and noxious plants, the street commissioner shall cause such weeds to be cut and removed. This section of the code further contemplates the cost incurred by the street commissioner becoming a lien on the property affected, to be placed upon the tax duplicate for