

State House
Annapolis, Maryland 21401

Re: Senate Bill 293

Dear Governor Hughes:

This is to advise you that we have reviewed for constitutionality and legal sufficiency Senate Bill 293, a bill which amends the current licensing law for fortune tellers and spiritualists in Dorchester County. As amended, this law would reduce the annual license fee and require that an applicant for a license have been "a resident, taxpayer and property owner of Dorchester County for at least 18 months..." Because this residency requirement violates the Privileges and Immunities Clause of the Federal Constitution, and because it is an integral part of the bill, we are unable to approve the bill.

Article IV, Section 2 of the Federal Constitution provides that "[t]he Citizens of each State shall be entitled to all Privileges and Immunities of Citizens of the several States." This clause "establishes a norm of comity" among the States in their treatment of the residents 1 of other states. Hicklin v. Orbeck, 437 U.S. 518, 523-24 (1978), and Austin v. New Hampshire, 420 U.S. 656, 660 (1975). Essentially, it requires that each state treat all citizens, residents and nonresidents equally with respect to those "privileges" and "immunities" bearing upon the vitality of the Nation as a single entity. Baldwin v. Fish and Game Commission, 436 U.S. 371, 383 (1978). It has long been established that one of the privileges and immunities protected by this clause is the pursuit of a trade, occupation or common calling. Hicklin, 437 U.S. at 524; Baldwin, 436 U.S. at 383; Toomer v. Witsell, 334 U.S. 385, 396 (1948); and Ward v. Maryland, 12 Wall. (79 U.S.) 418, 430 (1871).

In matters enjoying the protection of this clause, a state may not discriminate against residents of other states simply because of their residence, but this does not preclude treating nonresidents differently if there is a substantial basis apart from residence for doing so. Toomer v. Witsell, 334 U.S. 385, 396 (1948). Discrimination against nonresidents is not barred if there is something to indicate that they are a peculiar source of an evil at which a statute is aimed. Id. at 398. In each case the inquiry is whether there are independent reasons for the discrimination against nonresidents and whether the degree of discrimination bears a close relationship to them. Id. at 396. Applying these principles, the Supreme Court struck down the Alaska Hire Law, which required the State's oil and gas lessees to give a preference in their employment to Alaska residents. Hicklin, 437 U.S. at 520 and 525-526. Likewise, we can find no independent justification for the bill's durational residency requirement, which effectively discriminates against out-of-county, including out-of-state, residents who wish to pursue the business of telling fortunes and conducting seances in Dorchester County. The residence requirement is clearly