

073-105—April 5, 1973

## CONSTITUTIONAL LAW

U. S. CITIZENSHIP QUALIFICATION TO ENGAGE IN CERTAIN  
OCCUPATIONS AND PROFESSIONS OR ENTER  
THE PUBLIC EMPLOY*To: Robert L. Paulk, Jr., Executive Secretary, Civil Service Board, Miami**Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General*

## QUESTION:

What effect, if any, does a federal district court decision striking down a City of Miami civil service rule prohibiting the employment of aliens have on the statutes of Florida requiring citizenship as a prerequisite to engaging in certain occupations in this state?

## SUMMARY:

A federal district court decision striking down a city's civil service rule requiring all city employees to be United States citizens does not apply to, and has no effect upon, state statutes requiring United States citizenship as a qualification to engage in certain occupations and professions in this state; and the city must, perforce, employ such persons when necessary to carry out a municipal function or purpose.

As your letter enclosed only the summary final judgment and not the opinion of the federal district judge in question, the rationale of his decision is not before me. However, the fact that the city's civil service rule was struck down on constitutional grounds does not require a finding that the Florida statutes to which you referred in your letter are invalid. The validity of these statutes was not before the federal court for adjudication in the proceedings referred to in your letter. *Cf.* AGO 072-387, in which it was noted that a United States Supreme Court decision [Dunn v. Blumstein, 405 U.S. 330 (1972)] invalidating certain durational residency requirements for elections did not have the effect of invalidating the durational residence requirement contained in the Charter of the City of North Miami Beach. It was noted that "the individual problems of neither the State of Florida nor the City of North Miami Beach were before that Court."

To my knowledge, the United States Supreme Court has not specifically receded from its previous decisions upholding statutes that treat aliens differently from citizens in various contexts, as, for example, the statutory abridgment of an alien's right to hold land, *Cockrill v. California*, 268 U.S. 258 (1925); or to own stock in agricultural corporations, *Frick v. Webb*, 263 U.S. 326 (1923); or restricting hunting privileges to citizens of the United States, *Patsone v. Pennsylvania*, 232 U.S. 138 (1914); or prohibiting an alien from planting and harvesting oysters in the state's tidal waters, *McCready v. Virginia*, 94 U.S. 391 (1876); or rendering him ineligible for employment in public works, *Heim v. McCall*, 239 U.S. 175 (1915). It is true that in *Takahashi v. Fish & Game Comm'n*, 334 U.S. 410 (1948), the court invalidated a California statute prohibiting the issuance of a commercial fishing license to those aliens who were ineligible to become citizens of the United States, on the ground that this was an unlawful discrimination against the Japanese. The court rejected the state's contention that it had a "special public interest" in owning and conserving its fishery resources, stating that whatever special public interest the state had was inadequate to justify the exclusion of "any or all aliens who are lawful residents of the State from making a living by fishing in the ocean off its shores while permitting all others to do so." Again, in *Graham v. Richardson*, 403 U.S. 365 (1971), the court struck down a state law denying welfare benefits

solely on the basis of noncitizenship, noting that *Takahashi* "cast doubt on the continuing validity of the special public-interest doctrine in all contexts . . . ." 403 U.S. at 374. These and other decisions of the United States Supreme Court were reviewed in *Herriott v. City of Seattle*, 500 P.2d 101 (Wash. 1972), in holding that the city's civil service rule providing that only citizens were eligible to take the civil service examination could not constitutionally be applied to an alien transit worker. The court said:

The position of transit operator is a position of general employment that neither rises to the status of public office nor involves a requirement of security. Application of the citizenship requirement to these appellants, therefore, violates their constitutionally guaranteed right to equal protection of the law. [500 P.2d at 110.]

*See also* *Espinoza v. Farah Manufacturing Company*, 462 F.2d 1331 (5th Cir. 1972), in which the court said that "state action which discriminates against persons on the basis of their citizenship, or lack thereof, *threatens* to run afoul of the Fourteenth Amendment." (Emphasis supplied.) And *cf.* *Hill v. State*, 19 So.2d 857 (Fla. 1944), upholding a statutory citizenship requirement as to a business agent of a labor union in this state. *Accord:* Attorney General Opinion 073-6.

It is implicit in the decisions of the United States Supreme Court and other courts referred to above that a citizenship requirement will be upheld in some contexts when a state can show a compelling "special public interest"—as, for example, when a public office or a security interest is involved. Thus, unless and until the United States citizenship requirement made by our various state laws has been struck down in an appropriate proceeding as to a particular occupation or profession, or the United States Supreme Court in clear and unequivocal terms outlaws a citizenship requirement in all contexts, our Florida statutes so providing remain in full force and effect. Thus, only those persons who can qualify as citizens may engage in certain occupations and professions in this state. And the City of Miami will, perforce, be compelled to employ such persons when necessary to carry out a municipal function or purpose. (It might be noted that by Ch. 72-125, Laws of Florida—§455.012, F. S. (1972 Supp.)—the legislature has abolished the United States citizenship requirement as a condition precedent to obtaining a license to practice any of the professions or occupations enumerated in §455.01, F. S. However, the 1972 statute provides also that "any administrative board may require that an applicant submit proof of his intention to become a citizen as a condition of eligibility to sit for any board examination. . . ." Moreover, two of the occupations mentioned in your letter—policemen and fire fighters—are not included among the regulated professions or occupations listed in §455.01, *supra*.)

073-106—April 5, 1973

#### STANDARDS OF CONDUCT LAW

#### FILING SWORN STATEMENT OF INTEREST IN BUSINESS ENTITY HAVING SUBSTANTIAL BUSINESS COMMITMENTS WITH OTHER GOVERNMENTAL ENTITIES

*To: Mayor*

*Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General*

#### QUESTIONS:

1. Must a mayor who also serves as a senior vice president of an