

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

investment firm which is licensed by the state comptroller and does business with cities other than his own, within the state, file a sworn statement disclosing such interest as required by §112.313, F. S.?

2. If the answer to question 1 is in the affirmative, must the statement be filed with the secretary of state as well as with the clerk of the circuit court?

#### SUMMARY:

A mayor who also serves as a senior vice president of a corporation regulated by the state, which does substantial business with cities in the state, should file a sworn statement disclosing such interest with the clerk of the circuit court of the county in which he is principally employed pursuant to §112.313(2), F. S.

I shall assume for the purposes of answering the questions that the corporation of which the mayor serves as an officer is "regulated" by the state and has "substantial business commitments" from cities in the State of Florida. The Standards of Conduct Law, §112.313(2), F. S., requires a public officer or employee who is "an officer . . . in any corporation . . . which is subject to the regulation of, or which has any substantial business commitments from *any* state agency, county, city, or other political subdivision of the state" to file a sworn statement disclosing such interest with the appropriate official. (Emphasis supplied.) Clearly this section would apply to a mayor who is also a senior vice president of a corporation regulated by the state, which does business of a substantial nature with cities within the state.

As noted in AGO 072-172 "the purpose of the disclosure requirement apparently is to bring out into the open any interests that are presently or potentially the source of a conflict between public duties and private interests . . . ." There is no doubt, then, as to the applicability of §112.313(2), *supra*, in the situation before me for consideration. Question 1 is answered in the affirmative.

With regard to question 2, we should look again to §112.313(2), *supra*. The section requires *state* officers or employees who are, among other things, officers of a corporation that is regulated by the state or have substantial business commitments from any state agency, county, city or other political subdivision of the state to file a sworn statement disclosing such interest with the Department of State. On the other hand, if the person comes within the purview of §112.313(2), *supra*, but is not a state but a *city*, county, or other state political subdivision employee or officer, he shall file the sworn statement with the clerk of the circuit court of the county in which he is principally employed. As the mayor is not a state employee but a city employee, he need only file with the clerk of the circuit court of the county in which he is principally employed.

073-107—April 6, 1973

#### FLORIDA FACTORY-BUILT HOUSING ACT OF 1971 APPLICATION TO CONFLICTING LOCAL ORDINANCES ADOPTED PURSUANT TO FLORIDA ELECTRICAL CODE

To: Edward J. Trombetta, Secretary, Department of Community Affairs,  
Tallahassee

Prepared by: Joseph C. Mellichamp III, Assistant Attorney General

#### QUESTION:

If a local governmental entity enacts an electrical code pursuant