

to accept the nomination with the condition annexed that any right to the office thereby acquired would be terminated if the electorate approved the amendment abolishing the office. The same presumption would be applicable to a person who was nominated *and elected* to the office, knowing that the office might be abolished by vote of the electorate on the proposed constitutional amendment at the same general election at which he was elected to the office. *Cf. In re Advisory Opinion to the Governor*, 192 So.2d 757 (Fla. 1966), holding that a candidate for the office of circuit judge who had been a member of The Florida Bar for four years and who was elected to the office at the November 1966 general election was not eligible to assume the duties of the office in January 1967 in view of the fact that, at the same general election, an amendment to the Constitution changed from four to five years the bar membership requirement for circuit judges. Just as the elected circuit judge in that case could not validly be sworn in and commissioned to assume the duties of an office to which he was not eligible, a person nominated or elected to the office of lieutenant governor at a primary or general election at which the office was abolished could not be sworn in and commissioned to assume the duties of a nonexistent office.

In sum: The state would have no obligation to a nominee or an incumbent whose office is abolished in accordance with due process of law—which, in this case, would be a constitutional amendment duly adopted in accordance with the procedures prescribed by law. The proposed amendment should expressly provide for the date upon which it is to become effective and for the date upon which the office of lieutenant governor shall stand abolished, so that there can be no doubt that it was intended to apply retroactively to abrogate the rights, if any, acquired at a preceding primary or general election. The proposed amendment should also be in the proper form to comply with the requirements of Art. XI, §§1 and 5, *supra*, and should contain language that will effectively resolve or clarify any questions or ambiguities that might arise under Art. IV, §§3 and 5, State Const., relating to the office of lieutenant governor.

073-104—April 5, 1973

REGISTERED NURSES

U. S. CITIZENSHIP REQUIREMENT

To: Tom Tobiassen, Representative, 3rd District, Tallahassee

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTION:

May a statute validly require that, in order to obtain a license as a nurse, a person must be a United States citizen or submit proof of an intention to become a United States citizen?

SUMMARY:

Under the decisions of the United States Supreme Court, a United States citizenship requirement will be upheld in some contexts when a state can show a compelling special public interest. Thus, unless and until this requirement has been struck down by the courts in an appropriate proceeding as to a particular profession or occupation, including that of nursing, the statutory requirement is presumptively valid.

The Florida Supreme Court in *Hill v. State*, 19 So.2d 857 (Fla. 1944), upheld a statutory citizenship requirement as to a business agent of a labor union in this state and, in so doing, noted that

Similar regulations are imposed on attorneys, physicians, barbers, insurance agents, real estate brokers, *nurses*, beauty parlor operators, civil engineers, architects, liquor dealers, and many others engaged in gainful occupations. All such requirements have been upheld in the interest of the public health, morals, safety, welfare, and prosperity of the people. They are imposed on the theory that the business engaged in by the applicant vitally affects the public welfare and that the public is entitled to the protection they afford. (Emphasis supplied.) [19 So.2d at 859.]

It is true that the United States Supreme Court has struck down a state statute requiring citizenship in order to receive welfare payments, *Graham v. Richardson*, 403 U.S. 365 (1971), and prohibiting aliens who were ineligible to become citizens from holding fishing licenses, *Takahashi v. Fish & Game Comm'n*, 334 U.S. 410 (1948). *Cf. Dunn v. Blumstein*, 405 U.S. 330 (1972), invalidating certain durational residency requirements for elections. However, as noted in AGO 072-387, the individual problems of the State of Florida were not before the court in the *Dunn* decision, nor were they before the court in the other decisions; and to my knowledge the United States Supreme Court has not specifically receded from its previous rulings upholding statutes that treat aliens differently from citizens in various contexts. *See Cockrill v. California*, 268 U.S. 258 (1925), (holding land); *Frick v. Webb*, 263 U.S. 326 (1923), (owning stock in an agricultural corporation); *Patsone v. Pennsylvania*, 232 U.S. 138 (1914), (hunting privileges); *McCready v. Virginia*, 94 U.S. 391 (1876), (harvesting oysters in the state's tidal waters); and *Heim v. McCall*, 238 U.S. 175 (1915), (employment in public works). *See also Herriott v. City of Seattle*, 500 P.2d 101 (Wash. 1972), in which the court struck down a civil service rule providing that only citizens were eligible to take the civil service examination as 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.]

In *Graham* the court noted that *Takahashi* "cast doubt on the continuing validity of the special public-interest doctrine in *all contexts*" (Emphasis supplied.) And it is implicit in the decisions 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 in 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 has outlawed a citizenship requirement in *all* contexts, it cannot be said with any degree of certainty that a citizenship requirement, as applied to any given profession or occupation—including nursing—is invalid. (It might be noted that by Chapter 72-125, Laws of Florida [§455.012, F. S.], the legislature 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. The nursing profession is among those listed. 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. . . ." And the preceding remarks are premised on the assumption, implicit in your request, that such a requirement has been made by the Florida State Board of Nursing.)