



**WILLIAM J. SCOTT**

ATTORNEY GENERAL  
STATE OF ILLINOIS  
500 SOUTH SECOND STREET  
SPRINGFIELD

May 24, 1974

S-757

**INSURANCE:**  
Constitutionality of Citizenship  
Requirement as a Prerequisite to  
Obtaining an Insurance Agent's or  
Broker's License

Mr. Fred A. Mauck  
Director of Insurance  
525 West Jefferson Street  
Springfield, Illinois 62706

Dear Mr. Mauck:

This is to acknowledge your letter. In that letter you express concern about the constitutionality of enforcing the citizenship requirement contained in section 492 of the Illinois Insurance Code. (Ill. Rev. Stat. 1973, ch. 73, par. 1065-39.) You note that although section 492 of the Illinois Insurance Code, supra, is similar to the citizenship requirements found in other licensing statutes, it is less restrictive than a flat citizenship requirement contained in many such statutes.

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You then request my opinion on the following questions:

"1. Is Section 492 of Chapter 73 [sic], relating to the qualifications an individual must possess in order to become licensed as an agent or broker constitutional considering that it requires an individual applicant to be a citizen of the United States or if not a citizen to have filed a petition of naturalization?

2. If the requirement of citizenship is not constitutional, may the Director of Insurance disregard it or is he bound to follow its mandate unless and until it is changed by the legislature?"

Section 492 of the Illinois Insurance Code (Ill. Rev. Stat. 1973, ch. 73, par. 1065-39) provides in pertinent part:

"§ 492. \* \* \* No license shall be issued to a person or to a partnership, association, or corporation, unless such person or each member, officer or director (as the case may be) designated to act for such partnership, association or corporation is a citizen of the United States, or if not a citizen but eligible to become a citizen, has made a declaration of intention to become a citizen or, having made such declaration of intention, has filed a petition for naturalization within 30 days after becoming eligible to do so.

\* \* \*

For a general discussion of the constitutionality of citizenship requirements as a prerequisite to obtaining a license to practice a regulated profession or occupation, I direct your attention to my opinion S-747, issued April 19,

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1974. As I noted in that opinion, classifications based on alienage are inherently suspect and subject to close judicial scrutiny. When a state adopts a suspect classification, it bears a heavy burden of justification to uphold the constitutionality of such classification. It must be shown that its interest is both constitutionally permissible and substantial and that the classification is necessary for the accomplishment of its purpose.

The United States Supreme Court has had two occasions recently to examine citizenship requirements as a prerequisite to holding a state or local civil service position or to being admitted to the practice of a profession. In Sugarman v. Dougall, 93 S. Ct. 2842 (1973), the Court considered a requirement of citizenship as a prerequisite to employment in the competitive class of the civil service of the state and local governments of New York. While the Court recognized that in an appropriately defined class of positions, such as elective and high non-elective posts, citizenship might be rationally related to the position held, it ruled that a flat ban on employment of aliens had little, if any, relationship to a legitimate state interest. The Court held that such citizenship requirements violated the lawfully admitted resident alien's right to equal protection

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of the law guaranteed under the fourteenth amendment to the United States Constitution. In reaching its decision, the Court noted that the record did not disclose that any alien involved in the suit had ever taken any steps to attain United States citizenship 93 S. Ct. at 2845.

In a case more directly related to your first question, the United States Supreme Court examined a citizenship requirement as a prerequisite for admission to the practice of law in Connecticut. In considering this question, reference was made to the fact that the alien appellant was eligible for naturalization, that she had not filed a declaration of intention to become a citizen of the United States, and that the alien appellant had stated in her brief that she had no present intention of applying for United States citizenship. (In re Griffiths, 93 S. Ct. 2851, 2853 n. 1 (1973).) The Court ruled that the committee acting on the behalf of the State of Connecticut had not justified the use of a suspect classification by showing that citizenship was necessary to advance the State's legitimate interest on the qualifications of those admitted to the practice of law and that such a citizenship requirement was therefore unconstitutional as a violation of the equal

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protection clause of the fourteenth amendment. In re Griffiths,  
93 S. Ct. 2851, 2857-2859.

It is well established that the insurance industry is affected with the public interest and is subject to control by the State of Illinois in the exercise of its police power. (Memorial Garden Association, Inc. v. Smith, 16 Ill. 2d 116, 124.) While the State of Illinois has a substantial interest in insuring that applicants for insurance agents' or brokers' licenses possess the necessary business character and qualifications to protect the public interest, it does not appear that any substantial state interest is advanced by limiting holders of such licenses to those who are or who have filed their intention to become United States citizens. Such requirements are not rationally related to the applicant's qualifications to be an insurance agent or broker.

It is apparent that if the United States Supreme Court has ruled that citizenship requirements cannot be justified for employment in a state civil service position or for admission to the practice of law where the challengers of these requirements respectively have made no showing of intention to become citizens or where they have stated they have no intention

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of becoming United States citizens, then no type of citizenship requirement can be justified as a prerequisite for licensing for other occupations or professions. Both state employment and the practice of law are more intimately related to the function of state government than employment in a private occupation or another profession. Therefore, it is my opinion that the requirements of section 492 of the Illinois Insurance Code, supra, so far as it relates to citizenship or intention to become a citizen as a prerequisite to receive insurance agent's or broker's license is unconstitutional. Such a requirement violates the lawfully admitted resident alien's right to equal protection of the law guaranteed under both the fourteenth amendment to the United States Constitution and section 2 of article I of the Illinois Constitution of 1970.

As to your second question, I would recommend that the Department of Insurance cease to enforce the citizenship requirement of section 492 of the Illinois Insurance Code, (Ill. Rev. Stat. 1973, ch. 73, par. 1065.39) until the General Assembly has an opportunity to examine and take appropriate action to amend said section. Although the General Assembly

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could not constitutionally reimpose a citizenship requirement as a prerequisite to obtaining an agent's or broker's license from the Department of Insurance, neither this opinion nor opinion S-747 should be interpreted as holding that no requirement could be imposed based upon lawful admission to the United States or upon the type of visa held by the alien applicant.

Very truly yours,

A T T O R N E Y   G E N E R A L