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The State of South Carolina

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May 7, 1985

David E. Murday, Director of Research
House of Representatives
Medical, Military, Public and Municipal
Affairs Committee
Post Office Box 11867
Columbia, South Carolina 29211

Dear Mr. Murday:

You have asked this Office to comment as to the constitutionality of a provision of the proposed South Carolina Medically Indigent Assistance Act (H. 2118 or Section 20 of Part II of the 1985-86 Appropriations Bill). You correctly note that the provision in question establishes a definition of residency based on duration. Specifically, a person would have to live in South Carolina for six months before becoming eligible for the Assistance Fund. Based upon the United States Supreme Court's decision in Memorial Hospital v. Maricopa County, 415 U.S. 750 (1974) and subsequent Supreme Court decisions, we agree with your conclusion that a durational residency requirement would be "constitutionally suspect."

In considering the constitutionality of an act of the General Assembly, it is presumed that the act is constitutional in all respects. Upon enactment, the legislation will not be considered void unless its unconstitutionality is clear beyond any reasonable doubt. Thomas v. Macklen, 186 S.C. 290, 195 S.E. 539 (1937); Townsend v. Richland Co., 190 S.C. 270, 2 S.E.2d 777 (1939). All doubts are generally resolved in favor of constitutionality. While this Office may comment upon potential constitutional problems, it is solely within the province of the courts of this State to declare an act unconstitutional.

In the Maricopa County case, supra, the United States Supreme Court set forth the law governing durational residency

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provisions. There, the Court reviewed an Arizona statute which required an indigent to have been a resident of the County for twelve months in order to be eligible for free nonemergency medical care. The Court summarized as follows the governing constitutional analysis under the Equal Protection Clause:

The Arizona durational residency requirement for eligibility for nonemergency free medical care creates an "invidious classification" that infringes on the right of interstate travel by denying newcomers "basic necessities of life." Such a classification can only be sustained on a showing of a compelling state interest. Appellees have not met their heavy burden of justification, or demonstrated that the State, in pursuing legitimate objectives, has chosen means which do not unnecessarily infringe unconstitutionally protected interests.

415 U.S. at 269.

The Court rejected the several reasons offered to sustain the durational residency requirement. Among the rationales argued was that a durational residency period served as a "necessary means to insure the fiscal integrity of its free medical care program by discouraging an influx of indigents... ." Supra at 263. The Court found the argument unpersuasive. Moreover, it was contended that "eliminating the durational residency requirement would dilute the quality of services provided to longtime residents by fostering an influx of newcomers and thus requiring the County's limited public health resources to serve an expanded pool of recipients." Supra at 266. To this, the Court responded that the Equal Protection Clause does not permit the State to apportion its benefits and services on the basis of past tax payments.

Likewise, the Court discounted the idea that the expected influx of indigents would discourage the development of modern medical facilities, noting that a "State may not employ an invidious discrimination to sustain the political viability of its programs." Supra at 267. Neither could it be argued, said the Court, that a one year waiting period is a permissible "rule of thumb to determine bona fide residence" because such a requirement was overbroad. Similarly, the Court concluded that such a requirement could not constitutionally be used as a tool for preventing fraud because there existed "other mechanisms to

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serve that purpose ... which would have a less drastic impact on constitutionally protected interests." Supra at 268. Finally, the Court also rejected the idea that the one year waiting period could be employed for budget predictability.

Since the Maricopa County case was decided, the Court has reaffirmed its holding on several occasions. See, Sosna v. Iowa, 419 U.S. 393 (1975); 1/ Mathews v. Diaz, 426 U.S. 67 (1976); McCarthy v. Phil. Civil Service Commission, 424 U.S. 645 (1976); Zobel v. Williams, 457 U.S. 55 (1982); Martinez v. Bynum, 461 U.S. 321 (1983). Accordingly, Maricopa County still appears to be good law. Because virtually every reasonable rationale for upholding such a provision was presented to the Court in that case and rejected, we would thus advise that a durational residency provision, such as the one contained in the bill, would be constitutionally suspect. We do not believe this

1/ In Sosna, the Court did uphold a durational residency requirement for procuring a divorce. The Court reviewed previous durational residency cases and distinguished the divorce situation as follows:

What those cases [Sharpiro, Maricopa County, etc.] had in common was that the durational residency requirements they struck down were justified on the basis of budgetary or recordkeeping considerations which were held insufficient to outweigh the constitutional claims of the individuals. But Iowa's divorce residency requirement is of a different stripe. Appellant was not irretrievably foreclosed from obtaining some part of what she sought, as was the case with the welfare recipients in Shapiro, ... or the indigent patient in Maricopa County. She would eventually qualify for the same sort of adjudication which she demanded virtually upon her arrival in the State. Iowa's requirement delayed her access to the courts, but, by fulfilling it, a petitioner could ultimately obtain the same opportunity for adjudication which she asserts ought to be hers at an earlier point in time.

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conclusion is altered by the fact that, here, the durational residency requirement is six months, rather than the one year prerequisite in Maricopa County. See, Martinez v. Bynum, 416 U.S. at 325 [requirement that conditions a benefit on a "minimum period of residence" is suspect].

We would further note for your information that only recently in Martinez v. Bynum, supra, the Court emphasized that while a durational residency requirement is constitutionally infirm, a bona fide residency requirement is permissible. 2/ There, the Court stated the governing law in this area:

This Court frequently has considered constitutional challenges to residency requirements. On several occasions the Court has invalidated requirements that condition receipt of a benefit on a minimum period of residence within a jurisdiction, but it always has been careful to distinguish such durational residence requirements from bona fide residence requirements... A bona fide residence requirement, appropriately defined and uniformly applied, furthers the substantial state interest in assuring that services provided for its residents are enjoyed only by residents... It does not burden or penalize the constitutional right of interstate travel, for any person is free to move to a State and to establish residence there. A bona fide residence requirement simply requires that the person does establish residence before demanding the services that are restricted to residents.

461 U.S. at 325-329. And as stated by a leading treatise writer on constitutional law:

2/ A bona fide residency requirement only mandates that the individual be a resident at a given time, such as upon application for indigent care. McCarthy v. Phil. Civil Service Comm., 424 U.S. at 646. In other words, at the time, the individual intends to remain permanently and indefinitely in the particular place in question. See, Op. Atty. Gen., April 11, 1984 (and authorities cited therein).

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The Supreme Court has never held that a state or local government is prohibited from requiring persons to be residents of that location in order to receive governmental benefits. The state may restrict some welfare benefits to bona fide residents. The Shapiro [v. Thompson, 394 U.S. 618 (1969)] rationale only requires close judicial scrutiny of durational residency requirements, a distinction between new and old residents....

Nowak, Constitutional Law, p. 810 (2d ed. 1983). Since the Court in Maricopa County (which, as here, concerned medical assistance to the indigent) stated that its earlier decisions were not intended to "'cast doubt on the validity of appropriately defined and uniformly applied bona fide residence requirements'", it is reasonable to conclude that a bona fide residency provision, if contained in H.2118, would be upheld. See also, McCarthy v. Phil. Civil Service Comm., supra.

CONCLUSION

1. A durational residency provision of six months contained in H.2118 would be constitutionally suspect.
2. A bona fide residency requirement, if contained in H.2118, would be constitutional.

Sincerely,



Robert D. Cook
Executive Assistant for Opinions

RDC:djg