

1984 WL 249905 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 15, 1984

\*1 The Honorable Frank H. McGill

Member

South Carolina Senate

Box 759

Kingstree, South Carolina 29556

Dear Senator McGill:

You have asked us to advise you as to whether a person who is not an American citizen may be appointed to serve on the Williamsburg County Hospital Board. My rather hurried research reveals the following.

[Article XVII, § 1 of the South Carolina Constitution](#) (1985 as amended) provides that '[n]o person shall be elected or appointed to any office in this State unless he possesses the qualifications of an elector.' Our Supreme Court has interpreted this provision as 'meaning . . . that all officers, constitutional and statutory, and whether elected or appointed must be qualified electors . . .'. [McLure v. McElroy](#), 211 S.C. 106, 120, 44 S.E.2d 101 (1947). Like the situation you have presented, the [McLure](#) case involved the appointment of a member of a hospital board; thus, such a member would be an officer within the meaning of [Article XVII, § 1](#). Moreover, in construing the [McLure](#) case in the context of a non-citizen desiring to serve 'on a Board or Commission in the State of South Carolina', this office has stated previously:

. . . under the decisions of our Supreme Court in [McLure v. McElroy](#), *supra* and [Lee v. Clark](#), *supra* [224 S.C. 138, 145, 77 S.E.2d 485 (1953)], [a person] must be a qualified elector before he can be appointed to serve . . . Therefore, inasmuch as an alien cannot become a qualified elector in the State of South Carolina, it is the opinion of his office that an alien cannot be appointed to serve as a director of the South Carolina Public Service Authority.

[Op. Atty. Gen.](#), April 26, 1974. In view of the foregoing, it is unlikely that a non-citizen could be appointed to serve as a member of the Williamsburg County Hospital Board.<sup>1</sup>

However, the answer to your question is complicated somewhat by recent decisions of the United States Supreme Court. We note that the Supreme Court has recently invalidated a number of provisions in other states requiring various officials to be United States citizens. See, [Sugarman v. Dougall](#), 413 U.S. 634 (1973) [Court struck down a State statute preventing aliens from employment in permanent positions in the competitive class of the State civil service]; [In re Griffiths](#), 413 U.S. 717 (1973) [State bar]; [Examining Board v. Flores de Otero](#), 426 U.S. 572 (1976) [licensing for civil engineering]; [Bernal v. Fainter](#), 52 U.S.L.W. (May 30, 1984) [notaries public]. The Court will subject to strict scrutiny any classification which treats non-citizens differently unless the person occupying the position in question 'participate[s] directly in the formulation, execution, or review of broad public policy and hence perform[s] functions that go right to the heart of representative government.' [Sugarman](#), 413 U.S. at 647. In that event, strict scrutiny is not required. [Foley v. Connelie](#), 435 U.S. 291 (1978); [Ambach v. Norwick](#), 441 U.S. 68 (1979); [Cabell v. Chavez-Salido](#), 454 U.S. 432 (1982).

\*2 To our knowledge, no court has ever reviewed this State's requirement of citizenship for holding public office. We would presume, based upon the foregoing cases and authorities, that the functions of each such office would have to be examined on a case by case basis. It is uncertain whether a member of a hospital board would fall into that category where strict scrutiny was not required, thus permitting the State to impose a requirement that each member of that board be an American citizen. However, until such time as a court concludes otherwise, we must presume that the requirement of citizenship, discussed above,

remains effective. We simply wish to bring to your attention this recent United States Supreme Court case law development in an effort to fully advise you.

If we may be of further assistance, please let us know. With kindest personal regards, I am

Sincerely yours,

Robert D. Cook

Executive Assistant for Opinions

#### Footnotes

- 1 Pursuant to the existent authorizing legislation for the Hospital Board, there is no express requirement that members of the Board be citizens of the United States. See, Act No. 1255 of 1962; Act No. 671 of 1963. Moreover, we assume that no Kingstree County ordinance imposes such a requirement. Nevertheless, as noted above, the South Carolina Constitution does make such a requirement, regardless of the statutory law. McLure, supra.

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