



OFFICE OF THE ATTORNEY GENERAL

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

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REXFORD C. KOSACK
ATTORNEY GENERAL

TO : Chairman, Committee on Personal Rights/Natural Resources DATE: 7-3-85

FROM: Legal Counsel

RE : Qualifications for Holding Public Office and for Voting Opinion No. 24

You have asked whether it would be in violation of the Covenant or the U.S. Constitution to limit eligibility to vote and eligibility to hold elected office to persons who fall specifically under section 8(a), (b), and (c) of the Constitution's Schedule on Transitional Matters -- Interim Definition of Citizenship.

Whether or not any restrictions are placed upon persons seeking to vote or hold office violates constitutional standards would depend whether U.S. constitutional guarantees apply to the Commonwealth.

Section 501 of the Covenant provides that the 14th Amendment to the U.S. Constitution will be applicable within the Northern Mariana Islands as if the Northern Mariana Islands were one of the several states. Section 1003(b) provides that section 501 of the Covenant will become effective on a date proclaimed by the President of the United States, which occurred on January 9, 1978. Thus, no later than on that date, the 14th Amendment to the U.S. Constitution became applicable to the Commonwealth.

As a state has the right to impose restrictions on one seeking public office or seeking to vote, so does the Commonwealth under its sovereignty powers. However, since the 14th Amendment is applicable to the Commonwealth, any restriction, which discriminates against persons who otherwise would be eligible to hold office or to vote, becomes unconstitutional unless there is a showing of a compelling interest of the Commonwealth justifying the restriction. Chiments v. Stark, 353 F.Supp. 1211.

The right to vote and the right to hold office are two different rights and the Commonwealth may, as can the states, place more restrictions on the qualifications of those seeking to hold public office than they can for voting for the office.

Rec'd 7/5/85 - pm / sj

PUBLIC OFFICE

Although the U.S. Constitution does not guarantee a right to hold public office to any person, the equal protection clause does guarantee the right to be considered for such an office without the burden of invidiously discriminatory disqualifications. Antonio v. Kirkpatrick, 453 F.Supp. 1161 offd. 579 F.2d 1147. Where an absolute requirement for holding public office arbitrarily and unfairly precludes bona fide candidates from service without a legitimate purpose to justify the exclusion, the restriction will not survive a constitutional attack on equal protection grounds. Murphy v. Schilling, 271 Ind. 44, 389 N.E.2d 314.

The U.S. Constitution specifically requires that the President and Members of Congress be citizens of the United States. A state can require U.S. citizenship as a qualification for certain public positions that involve discretionary decision-making or execution of policy. Foley v. Connelie, 435 U.S. 291. However, to limit the eligibility to hold office to one who falls under section 8(a), (b), or (c) of the Constitution's Schedule on Transitional Matters would be unconstitutional as there is lacking the compelling interest of the Commonwealth justifying the restriction.

Legal Opinion No. 26 prepared for the Local Government Committee sets forth an analysis of the compelling interest as it applies to the right to hold office and a restriction imposed on this right limiting office holders to those of Northern Mariana Islands descent. A copy of the opinion is attached as Exhibit "A".

VOTE

The states alone establish qualifications for voting. Lassiter v. Northampton County Board of Education, *infra*. These qualifications are fixed by statutes or by the state constitutions and the states have the power to prescribe any reasonable qualification of voters not inconsistent with the equal protection clause of the 14th Amendment. Louisiana v. United States, 380 U.S. 145, 13 L.Ed. 2d 709, 85 S.Ct. 817. Although a state has a wide scope in determining qualifications for voters, it is not permitted to adopt any standard it desires. Lassiter, 360 U.S. 45, 3 L.Ed. 2d 1072, 79 S.Ct. 985. Residence, age, and previous criminal record are examples of factors a state can take into consideration in determining the qualifications of voters. Citizenship is also a permissible requirement and it has the effect of denying the right to vote to aliens. However, any attempt to distinguish between citizens with respect to qualifications for voting is unconstitutional. Kinneen v. Wells, 144 Mass. 11 N.E. 916.

Chairman, Committee on Personal
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As mentioned earlier, the right to vote and the right to be a candidate for and hold office are separate matters, and the state may require that a citizen meet more strict requirements to hold office than he does to vote for those offices. Triano v. Massion, 109 Ariz. 506, 513 P.2d 935. Since we have concluded that to allow only those people of Northern Mariana Islands' descent to hold public office would violate the 14th Amendment to the U.S. Constitution, to place the same restriction on the right to vote would likewise be unconstitutional.

Attached as Exhibit "B", please find a copy of a general listing for qualifications on a state-by-state basis including the territories of Guam, Virgin Islands and Puerto Rico.

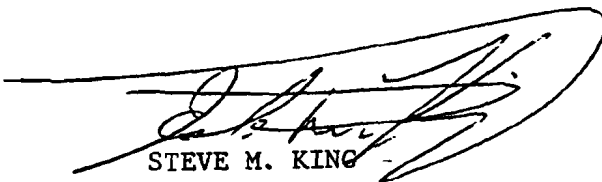


ERIC S. SMITH
Assistant Attorney General

MEMORANDUM

TO : Legal Counsel, Attorney General
FROM : Committee on Personal Rights/Natural Resources
SUBJECT : ELIGIBILITY TO VOTE & TO HOLD ELECTED OFFICE

WILL IT BE A VIOLATION OF THE COVENANT OR THE U.S. CONSTITUTION TO LIMIT ELIGIBILITY TO VOTE AND ELIGIBILITY TO HOLD ELECTED OFFICE TO PERSONS WHO FALL SPECIFICALLY UNDER SECTION 8 (a), (b) AND (c) OF THE SCHEDULE ON TRANSITIONAL MATTERS? THIS WILL EXCLUDE AMERICANS WHO ARE U.S. CITIZENS PURSUANT TO AMENDMENT 14(a) of the U.S. CONSTITUTION.


STEVE M. KING
CHAIRMAN

TO : Chairman, Local Government Committee

DATE: 6-25-85

FROM: Legal Counsel

RE : Northern Marianas Descent as a Qualification for Office
Opinion No. 0126

You have asked whether it is a violation of the Covenant or U.S. Constitution to allow only those people of Northern Marianas descent as defined in Section 4 of Article XII to hold the office of mayor. The short answer is that such an eligibility requirement would violate Amendment 14 of the U.S. Constitution, made applicable to the Commonwealth by Section 501 of the Covenant.

The 14th Amendment of the U.S. Constitution reads in relevant part "No state shall... deny to any person within its jurisdiction the equal protection of its laws."

Northern Marianas descent is defined at Article XII, section 4 of the Constitution in terms of the place of birth or domicile as of 1950 of a person or his ancestors. Restricting eligibility to hold office to that class of people raises the question of whether such a restriction unfairly discriminates against residents of the Northern Marianas who were not born or domiciled in the Northern Marianas by 1950, or are not of one-quarter descent of a person who was a full-blooded Northern Marianan as of 1950. In considering whether such a restriction would violate equal protection, the threshold question is how a court would evaluate such a restriction on eligibility. A court can apply either the "compelling state interest test" or the "rational basis test" in evaluating such a classification.

When the restriction infringes upon a fundamental right, the rigorous "compelling state interest" standard is applied. Under the "compelling state interest test", the Commonwealth's classification would be unconstitutional unless it is necessary to promote a governmental interest which the court finds to be "compelling".

EXHIBIT A #26

Fundamental rights which could be infringed by restricting eligibility to hold public office to persons who were born or domiciled here by 1950, or their descendants, could include the right to vote, to travel interstate freely, to be a candidate for public office, or to associate with others and express oneself as guaranteed by the First Amendment to the United States Constitution.

The less stringent traditional equal protection standard, the rational basis test, has been applied in other circumstances. Under this less burdensome test, a restriction will be found to deny equal protection if "it is without any reasonable basis, and therefore is purely arbitrary". See Lindsley v. National Carbonic Gas Co., (1911) 220 U.S. 61, 55 L.Ed. 369, 31 S. Ct. 337. Stated another way, under the traditional test, a restriction will survive an equal protection attack if the classification has a "reasonable basis" for, or is "rationally related" to the achievement of a legitimate state goal. Wallser v. Yucht, (1972, D.C. Del.), 352 F.Supp. 85.

I am unsure what the goals could be of restricting eligibility to hold public office to persons who were born or domiciled in the Northern Marianas by 1950, or descended from such a full-blooded Mariana. However, goals advanced in favor of durational residency requirements for office-holding include ensuring that candidates are aware of the problems within the governmental unit they are to serve, of ensuring that voters are aware of the relative merits of the candidates, and of precluding fraudulent candidacies by persons who are not seriously concerned with or capable of serving the constituencies. "Validity of requirement that candidate or public officer has been a resident of a governmental unit for a specified period." 165 ALR 3rd 1048, 1054 (1975). Presumably, the proposed constitutional amendment serves much the same goals.

In summary, justification of this restriction must be related to the attainment of a legitimate state goal, in the case of the rational basis test, or the attainment of a "compelling state interest", in the case of the more rigorous standard. It seems to me that the restriction cannot withstand scrutiny under the "rational basis test", let alone the compelling state interest test.

If the court applies the rational basis test, the court would find that the restriction proposed does not further a legitimate state purpose. To the contrary, birth or domicile in the Northern Marianas by 1950 does not necessarily contribute to a candidate's familiarity with the area or to the voters' familiarity with the candidate. For example, an eligibility requirement based on birth or domicile in the Northern Marianas by 1950 would deny the right to run for office to a person born in Guam even if that person has

lived 20 or more years in the Northern Marianas but grant such a right to a person born or domiciled in the Northern Marianas before 1950 but who lived his entire life in California.

The most telling argument against upholding the rationality of this restriction however derives from the closed nature of the classes created.

Length of residency may bear a rational relationship to fitness for office. The proposed amendment, however, would never allow people who were not born or domiciled, nor descended of people who were born or domiciled in the Northern Marianas by 1950 to qualify for office, no matter how long they reside here or how well they know the local conditions or are known to the voters. The fact that people who know the local conditions and are known to the local voters would be denied the opportunity to hold office under the proposed amendment negates the purpose supposedly promoted by restricting office-holding to people who were born or domiciled before 1950.

To be sure, allegiance and attachment may be rationally measured by length of residency -- length of residence may for example, be used to test the bona fides of citizenship -- and allegiance and attachment may bear some rational relationships to a very limited number of legitimate state purposes. Cf. Chimento v. Stark, 353 S. Supp. 1211 (N.H.), summarily affirmed 414 U.S. 802, 38 L. Ed. 2d 39, 94 S. Ct. 125 (1973), (7-year citizenship requirement to run for governor); U.S. Const. Art. I, sec. 2, cl. 2, sec. 2; Art. II, sec. 1, cl. 5.

Zobel v. Williams, 457 U.S. 55, 70, 72 L. Ed. 2d 672, 102 S. Ct. 2309 (Brennan dissenting).

In Zobel, the court found that the distinction in question was based on an illegitimate state interest -- rewarding the past contributions of its citizens. Therefore, the court held the distinction to be without a rational basis. The court described the consequences of allowing states to create classes unsupported by a rational basis as follows: "It would permit the states to divide citizens into expanding numbers of permanent classes. Such a result would be clearly impermissible". 457 U.S. at 64. The court is saying that if the states are allowed to create classifications among citizens that are not founded upon differences among citizens that are significant in light of legitimate state objectives, the classifications would become permanent because the basis of the classifications would not provide a means for citizens to move from one classification to another.

6-25-85

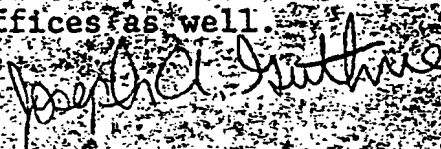
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The proposed constitutional amendment would create such a permanent classification. For instance, even if a citizen lived here long enough to acquire knowledge of the local conditions and to become known to the voters, he still could not move into the class of people eligible for office. Consequently, the proposed amendment is repugnant to the Equal Protection Clause of 14th Amendment.

Likewise, conceivable interests which might be served by such a restriction have been held not to be legitimate state interests. Favoring established residents over new residents is a constitutionally unacceptable justification for a residency requirement. Vlandis v. Kline, 412 U.S. 441, 37 L.Ed.2d 63, 93 S. Ct. 2230 (1973). Likewise, a state's desire "to reward citizens for past contributions" is clearly not a legitimate state purpose. Zobel v. Williams, 457 U.S. at 63.

As the proposed amendment would fail to meet the requirements of the Equal Protection Clause under the rational basis test, it is not necessary to consider whether the law, although affecting a fundamental right, is justified by a compelling interest under the compelling state interest test. Zobel v. Williams, 457 U.S. at 60-61.

In conclusion, the proposal to allow only those people of Northern Mariana's descent to hold the office of mayor would violate amendment 14 of the U.S. Constitution, made applicable to the Commonwealth by Section 501 of the Covenant. This would apply to other offices as well.


JOSEPH A. GUTHRIE
Assistant Attorney General

ATTACHMENT A

B. TABULATED STATUTORY MATERIAL

QUALIFICATIONS FOR VOTING

State or other jurisdiction	Minimum age	U. S. citizen	Residence in			Literary test	Poll tax(a)
			State	County	District		
Alabama.....	21	*	2 yrs.	1 yr.	3 mo.	....	(c)
Alaska.....	19	*	1 yr.	.....	30 da.	....	(c)
Arizona.....	21	*	1 yr.	30 da.	30 da.	*	....
Arkansas.....	21	*	12 mo.	6 mo.	1 mo.	....	*
California.....	21	(h)	1 yr.(i)	90 da. (i)	54 da.	*	....
Colorado.....	21	*	1 yr.	90 da.	15 da.(j)	....	....
Connecticut.....	21	*	1 yr.	.....	6 mo.	*	....
Delaware.....	21	*	1 yr.	3 mo.	30 da.	*	....
Florida.....	21	*	1 yr.	6 mo.	.....	....	....
Georgia.....	18	*	1 yr.	6 mo.	.....	(l)	....
Hawaii.....	20	*	1 yr.	.....	3 mo.	*(m)	....
Idaho.....	21	*	6 mo.	30 da.	.....	....	....
Illinois.....	21	*	1 yr.	90 da.	30 da.	....	....
Indiana.....	21	*	6 mo.	60 da.(o)	30 da.	....	....
Iowa.....	21	*	6 mo.	60 da.	10 da.	....	....
Kansas.....	21	*	6 mo.	30 da.(o)	30 da.	....	....
Kentucky.....	18	*	1 yr.	6 mo.	60 da.	....	....
Louisiana.....	21	*	1 yr.	1 yr.	3 mo.(p)	(q)	....
Maine.....	21	*	6 mo.	3 mo.	3 mo.	*	....
Maryland.....	21	*	1 yr.	6 mo.	6 mo.	....	....
Massachusetts..	21	*	1 yr.	.....	6 mo.(r)	*	....
Michigan.....	21	*	6 mo.	.....	30 da.	....	....
Minnesota.....	21	(h)	6 mo.	.....	30 da.	....	....
Mississippi.....	21	*	2 yrs.	.....	1 yr.(t)	*	(u)
Missouri.....	21	*	1 yr.(w)	60 da.	60 da.	....	....
Montana.....	21	*	1 yr.	30 da.	.....	....	....
Nebraska.....	21	*	6 mo.	40 da.	10 da.	....	....
Nevada.....	21	*	6 mo.	6 mo.	30 da.	....	....
New Hampshire..	21	*	6 mo.	.....	6 mo.	*	....
New Jersey.....	21	*	6 mo.	60 da.	.....	....	....
New Mexico.....	21	*	12 mo.	90 da.	30 da.	....	....
New York.....	21	(h)	1 yr.	4 mo.	30 da.	(x)	....
North Carolina..	21	*	1 yr.	.....	30 da.	*	....
North Dakota...	21	*	1 yr.	90 da.	30 da.	....	....
Ohio.....	21	*	1 yr.(y)	40 da.	40 da.	....	....
Oklahoma.....	21	*	1 yr.	6 mo.	30 da.	....	....
Oregon.....	21	*	6 mo.	.....	30 da.	*	....
Pennsylvania...	21	*	1 yr.(z)	.....	2 mo.	....	....
Rhode Island...	21	*	1 yr.	.....	6 mo.	....	....
South Carolina..	21	*	2 yrs.(aa)	1 yr.	4 mo.	(ab)	....
South Dakota...	21	*	1 yr.	90 da.(ac)	30 da.(ac)	....	....
Tennessee.....	21	*	12 mo.	3 mo.	.....	....	....
Texas.....	21	*	1 yr.	6 mo.	6 mo.	....	(u)
Utah.....	21	(h)	1 yr.	4 mo.	60 da.	....	....
Vermont.....	21	*	1 yr.	.....	3 mo.(o)	....	....
Virginia.....	21	*	1 yr.	6 mo.	30 da.	*	(ac)
Washington.....	21	*	1 yr.	90 da.	30 da.	*	....
West Virginia...	21	*	1 yr.	60 da.	.....	....	....
Wisconsin.....	21	*	1 yr.(y)	.....	10 da.	....	....
Wyoming.....	21	*	1 yr.	60 da.	10 da.	*	....
Guam.....	18	*	2 yrs.	.....	90 da.(ah)	....	....
Puerto Rico.....	21	*	1 yr.	.....	1 yr.	....	....
Virgin Islands...	21	*	1 yr.	.....	60 da.	*	....

NOTE: no state has property qualifications for voting in a general election. Some states have property qualifications for voting on bond issues or special assessments.

(a) Poll or head taxes are levied in many other states. Those listed here provide that payment of the poll tax is a prerequisite for voting.

(b) All states which have permanent registration, except Alabama, Delaware, Florida, Maine, Mississippi, Nebraska, New Hampshire and South Dakota, make it subject to cancellation for failure to vote at certain specified intervals.

(c) Must pay all poll taxes owed for the two years next preceding election at which person offers to vote. Persons who have honorably served in the military service of the United States while the United States is engaged in hostilities, whether war is declared or not, are exempt from payment of poll taxes.

(d) Registration is permanent unless removed for cause.

(e) Must be able to read or speak the English language.

(f) Municipal election.

(g) Except for irrigation district elections.

(h) Must have been citizen 99 days.

(i) Persons who have resided in the state for at least 54 days may vote for Presidential elections immediately prior to moving to the state, they were qualified electors in another state or would have been eligible to vote in such other state at the time of such election. Such persons must meet all other qualifications for voting.

(j) City or town, 30 days.

(k) All except certain minor elections.

(l) Under 1949 act, all voters must re-register and pass literacy test. Those failing test may qualify by answering 10 of 30 oral questions prescribed by law.

(m) English or Hawaiian language.

(n) For all state and federal elections.

(o) Township.

(p) Municipality, four months.

From Book of the States 1961-62; with permission of the Council of State Gov'ts.

QUALIFICATIONS FOR VOTING—Continued

Registration		Type		Coverage			State or other jurisdiction
Permanent(b)		Periodic		Frequency	All elections	Some elections	
All areas	Some areas	All areas	Some areas				
*(d)	....	....	....	....	*	....	Alabama
....	*	....	....	....	(f)	....	Alaska
*	....	....	....	....	(g)	....	Arizona
....	....	....	....	....	....	....	Arkansas
*	....	....	....	....	*	....	California
*	....	....	....	....	....	(k)	Colorado
*	....	....	....	....	*	....	Connecticut
*	....	....	....	....	*	....	Delaware
*	....	....	....	....	*	....	Florida
*(d)	....	....	....	....	*	....	Georgia
*	....	....	....	....	*	....	Hawaii
*	....	....	....	....	*	....	Idaho
*	....	....	....	....	(n)	....	Illinois
....	*	....	*	4 years	(k)	....	Indiana
....	*	....	*	....	(k)	....	Iowa
*	....	....	....	....	*	....	Kansas
*	....	....	....	....	*	....	Kentucky
....	*	....	*	4 years	*	....	Louisiana
*	....	....	....	....	*	....	Maine
....	*	....	*	....	*	....	Maryland
*	....	....	....	....	*	....	Massachusetts
*	....	....	....	....	*	....	Michigan
....	*	....	*	....	(s)	....	Minnesota
*(d)	....	....	....	....	*(v)	....	Mississippi
....	*	....	*	4 years	*	....	Missouri
*	....	....	....	....	....	(k)	Montana
....	*	....	*	6 years	....	(k)	Nebraska
*	....	....	....	....	*	....	Nevada
*	....	....	....	....	*	....	New Hampshire
*	....	....	....	....	*	....	New Jersey
*	....	....	....	....	*	....	New Mexico
....	*	....	*	Annual	....	*	New York
*	....	....	....	....	*	....	North Carolina
....	....	....	....	....	*	....	North Dakota
....	*	....	*	....	(s)	....	Ohio
*	....	....	....	....	(s)	....	Oklahoma
*	....	....	....	....	*	....	Oregon
*	....	....	....	....	*	....	Pennsylvania
*	....	....	....	....	*	....	Rhode Island
....	....	*	....	Decennial	*	....	South Carolina
*	....	....	....	....	....	*	South Dakota
*	....	....	....	....	*	....	Tennessee
(af)	(aj)	(aj)	(aj)	Annual	....	....	Texas
*	....	....	....	....	....	(k)	Utah
....	....	*	....	Every elec.	....	*	Vermont
(af)	....	....	....	....	*	....	Virginia
*	....	....	....	....	(g)	....	Washington
*	....	....	....	....	(ag)	....	West Virginia
....	*	....	....	....	*	....	Wisconsin
....	....	*	....	Every gen. elec.	....	*	Wyoming
*	....	....	....	....	*(v)	....	Guam
*	....	....	....	....	*	....	Puerto Rico
....	....	....	....	....	....	....	Virgin Islands

(n) Literacy test required, but exception allowed if person can pass certain specified requirements.
 (o) In city or town.
 (p) Except school district elections.
 (q) Ministers of the Gospel and their wives may vote after six months' residence.
 (r) Assessed upon citizens 21 to 60 years of age except those specifically exempted.
 (s) Registration is for all elections of state and county, but voter must be registered in municipality also to vote in municipal elections.
 (t) When voting for Presidential and Vice Presidential electors only 60 days' residence required.
 (u) A person who became entitled to vote after January 1, 1922, must be able, except for physical disability, to read and write English.
 (v) No residence requirement when voting for Presidential and Vice Presidential electors.

(z) Six months if previously an elector or native of the United States.
 (aa) Ministers of the Gospel, teachers in public schools, and their spouses may vote after six months' residence.
 (ab) Ownership of property is an alternative to literacy.
 (ac) No elector who has changed his residence from one county or precinct to another loses his right to vote in his former county or precinct until he acquires voting residence in the new one.
 (ad) Constitution provides for registration in cities over 10,000, but no system exists. Poll tax receipts determine eligibility of voters aged 21 to 60 years; exemption certificates determine eligibility for those over 60 in cities over 10,000, and for certain others.
 (ae) Must owe no past due taxes.
 (af) Exempt in some cities.
 (ag) All elections except special elections.
 (ah) Precinct.