



# The Attorney General of Texas

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An Equal Opportunity  
Affirmative Action Employer

Honorable G. L. "Lynn" Tate  
Commissioner  
Texas Department of Labor  
and Standards  
Box 12157  
Austin, Texas 78711

Opinion No. H-1140

Re: Whether a non-citizen of the  
United States may be licensed under  
the Texas Private Employment Agency  
Law, art. 5221a-6, V.T.C.S.

Dear Commissioner Tate:

You have requested our opinion concerning the constitutionality of article 5221a-6, section 5(a)(1), V.T.C.S., which deals with Private Employment Agency licensing and provides:

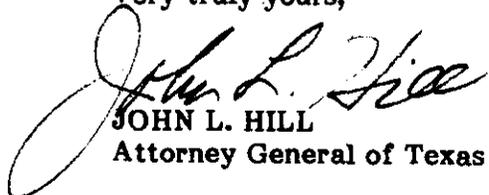
(a) Application for a license as an operator may be made and shall be issued to any person who (1) is a citizen of the United States . . . .

On numerous occasions this office has stated that such citizenship requirements are unconstitutional under the equal protection clause of the 14th Amendment to the United States Constitution. Attorney General Opinions H-926 (1977) (landscape architect); H-157 (1973), R-2247 (1950), O-866 (1939) (physician); H-81 (1973) (certified public accountant); and M-447 (1969) (vocational nurse). The United States Supreme Court has made the law quite clear in this regard. Restrictions based on alienage cannot be upheld unless the State can prove that the restriction is necessary to accomplish a compelling state purpose. See Examining Board of Engineers, Architects and Surveyors v. Flores de Otero, 426 U.S. 572 (1976) (aliens may not be prohibited from being licensed as engineers); In re Griffiths, 413 U.S. 717 (1973) (aliens may not be denied admission to the State bar); Sugarman v. Dougall, 413 U.S. 634 (1973) (aliens may not be denied civil service employment); Graham v. Richardson, 403 U.S. 365 (1971) (aliens are entitled to welfare benefits). We can discern no meaningful distinction between the rational basis for such a restriction as applied to Private Employment Agency operators on the one hand versus physicians, nurses, accountants and landscape architects on the other. Accordingly, in our opinion article 5221a-6, section 5(a)(1), V.T.C.S., violates the 14th Amendment to the United States Constitution and is invalid.

S U M M A R Y

Article 5221a-6, section 5(a)(1), which restricts licensing as Private Employment Agency operators to citizens of the United States, is unconstitutional.

Very truly yours,

  
JOHN L. HILL  
Attorney General of Texas

APPROVED:

  
DAVID M. KENDALL, First Assistant

  
C. ROBERT HEATH, Chairman  
Opinion Committee

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