

## Opinion No. 55-6161

May 12, 1955

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. Murray A. Hintz, State Director, Department of Public Welfare, Santa Fe, New Mexico

In your letter of May 6, 1955 you inquire as to whether a person who is not a citizen of the United States may be hired as an employee of the Welfare Department if he has proper immigration status and has lived within the State for more than one year.

You refer to an opinion of this office, in Attorney General's Opinions 1912-1913, page 285, holding that Article VII, Section 2 refers only to public officers as distinguished from employees. We agree with this opinion. However, subsequent to that time the Legislature passed Chapter 68, Laws 1933, compiled as Sections 5-1-5 through 5-1-9 of the 1953 Compilation.

Section 5-1-5, provides as follows:

"Hereafter all employees of the state of New Mexico, including all political subdivisions thereof and including all of the departments, bureaus, boards, commissions and institutions in said state, and all of its political subdivisions, shall be residents of the state of New Mexico, having resided in this state for a period of at least one (1) year prior to the commencement of their employment and it shall be the duty of every employee of labor, including the state of New Mexico and all political subdivisions thereof and including all of the departments, bureaus, boards, commissions or institutions, engaged in the construction, erection, alteration, repair or maintenance of any public work with the state of New Mexico to employ persons who have resided in the state of New Mexico, for at least one (1) year previous to the time of employment, to the extent of ninety (90) per centum of the total number of persons of each class of labor so employed, whenever such equally skillful resident labor is available."

The question presented is whether the words "resident of the State of New Mexico" permit the employment of persons who are not citizens of the United States. The words "resident" and "citizen" have many different meanings. At times they are considered synonymously and at times are distinguishable, depending largely on the sense in which they are used. 14 C.J.S. Citizens, Section 1-a.

In *Dodd vs. Dodd* (Tex. Civ. App.) 15 S.W. 2d 686, it was stated:

"The words 'inhabitant', 'resident', and 'citizen', as used in our statute pertaining to divorce, have substantially the same meaning."

Similarly, in *Stevens vs. Larwill* (Mo. App.) 84 S.W. 113, it was held, citing *Cooper vs. Galbraith*, 3 Wash. CC 546-554, Fed. Cas. No. 3193, as follows:

"A citizen of the U.S. is entitled to transfer his citizenship from one state to another by a change in domicile whenever he desires to do so."

This would at least indicate that such a privilege is not available to aliens, due perhaps in part to the fact that their status in the United States is subject to change or revocation at the whim of the Federal Government.

Likewise, in *Gallagher vs. Gallagher* (Tex. Civ. App.) 214 S.W. 516, it was stated:

"The words 'inhabitant', 'citizen', and 'resident', are stated by Judge Cooley to mean substantially the same thing."

To the same effect see *Standard Stoker Co., vs. Lower* (D.C. Md.) 46 Fed. 2d 678, where the three words above mentioned were stated to be synonymous for jurisdictional purposes.

Also see *Prowd vs. Gore* (D.C. App. Cal.) 207 Pac. 490, where the Court commented:

"While the word 'citizen' is not convertible with 'resident,' nevertheless it is often used synonymously with such term without any implication of political privileges."

As previously stated, there are other cases which hold in a contrary manner. We cannot say from reading the statute that it was the intent of the Legislature to permit the employment of persons in New Mexico who were not and might never become citizens of the State and of the Nation. We feel that in the event of a Court decision on the subject, the legislative intent might be construed in either way.

In view of the fact that under Section 5-1-8 of the 1953 Compilation, employment of persons contrary to Section 5-1-5 is a penal offense, we believe that the statute must be construed in such a manner as to offer the greatest protection to employers such as yourself, and must therefore hold that it prohibits the employment of non-citizens of the United States.

Of course, if qualified personnel cannot be obtained within the State of New Mexico, the Appropriations Act would permit employment of qualified non-residents whether aliens or not.

By Walter R. Kegel

Assistant Attorney General