

Opinion No. 80-20

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OPINION OF: Jeff Bingaman, Attorney General

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TO: David Miller, D.D.S., Secretary-Treasurer, New Mexico Board of Dentistry

BOARDS, COMMISSIONS, COUNCILS

The board of dentistry may not require United States citizenship as a condition of licensure as a dentist or dental hygienist.

QUESTIONS

May the board of dentistry require United States citizenship as a condition of licensure as a dentist or dental hygienist?

CONCLUSIONS

No.

ANALYSIS

Section 61-5-8 NMSA 1978 requires an applicant for licensure as a dentist to furnish the board of dentistry with satisfactory evidence that he "is a citizen of the United States." Section 61-5-11 NMSA imposes a similar requirement on applicants for licensure as a dental hygienist. Although the citizenship requirement is clearly enumerated in the statutes, recent decisions of the United States' Supreme Court would indicate that such a requirement cannot be enforced when it conflicts with the constitutional guarantee of equal protection. Fourteenth Amendment, United States Constitution; Article II, Section 18, New Mexico Constitution.

OPINION

In **In re Griffiths**, 413 U.S. 717, 721-722 (1973) the Court explained with respect to a state bar rule requiring citizenship for admission to the bar, that:

"classifications based on alienage . . . are inherently suspect and subject to close judicial scrutiny In order to justify the use of a suspect classification, a State must show that its purpose or interest is both constitutionally permissible and substantial, and that its use of the classification is 'necessary . . . to the accomplishment' of its purpose or the safeguarding of its interest."

The Court found that the various reasons advanced by Connecticut in support of the requirement failed to meet this admittedly strict standard. It noted that the State's ultimate interest in the licensing of attorneys was "to assure the requisite qualifications of persons licensed to practice law," 413 U.S. at 722, and specifically rejected the asserted bases for the statute being far too broad to accomplish such narrowly defined objectives. The state "failed to show the relevance of citizenship to any likelihood that a lawyer will fail to protect faithfully the interests of his clients." 413 U.S. at 724.

Similarly, in **Examining Board of Engineers, Architects and Surveyors v. Flores de Otero**, 426 U.S. 572 (1976), the Court struck down a Puerto Rico statute requiring citizenship for licensure as an engineer, architect or surveyor stating:

{*151} ". . . we apply the standards of our recent decisions in **Graham v. Richardson**, 403 U.S. 365 (1971); **Sugarman v. Dougall**, 413 U.S. 634 (1973) and **In re Griffiths**, 413 U.S. 717 (1973). These cases establish that state classifications based on alienage are subject to 'strict judicial scrutiny.' **Graham v. Richardson**, 403 U.S., at 376. Statutes containing classifications of this kind will be upheld only if the State or Territory imposing them is able to satisfy the burden of demonstrating 'that its purpose or interest is both constitutionally permissible and substantial, and that its use of the classification is 'necessary . . . to the accomplishment' of its purpose or the safeguarding of its interest.'"

In view of these decisions it is difficult to conceive of any state interest which can be successfully advanced to support the requirement of citizenship in the field of dentistry. The state's legitimate interest in licensing persons to practice dentistry or dental hygiene is to assure that the individual is competent. This interest is addressed by the other subsections of the Dentistry Act, specifically Sections 61-5-8 and 61-5-11 NMSA 1978, which require "Completion of a course of training . . . recognized by the board and . . . approved by the council on education of the American Dental Association," for dentists and dental hygienists respectively and by Sections 61-5-9 and 61-5-12 NMSA 1978, which require the applicant to pass a written national examination administered by the council of the National Board of Dental Examiners of the American Dental Association and a clinical examination administered by the Board.

Accordingly, it is our opinion that the citizenship requirements imposed by the Dental Act cannot be enforced consistent with constitutional guarantees of equal protection.

ATTORNEY GENERAL

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