

FORMAL OPINION

1. "Moneys, choses in action and effects deposited by an inmate in trust with the chief executive officer of the home and unclaimed at the death of the inmate, dying intestate, shall be deemed to be the property of the home. Such property shall be held in trust by the chief executive officer for 3 years following the death of the depositor, with the power to invest the funds with the consent of the board of managers and to use the income for the benefit of the inmates as the board may deem most advisable.

Such property remaining unclaimed 3 years after the death of its depositor shall be deemed to be the property of and subject to the absolute control and disposal of the board of managers to be used for such purposes as they deem most advisable."

September 23, 1974

DR FRED G. BURKE, *Commissioner*
Department of Education
225 West State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 10-1974

Dear Dr. Burke:

The Department of Education has asked for an opinion as to the validity of United States citizenship requirements imposed by law as a precondition to employment and the acquisition of tenure by a teacher in the public schools, as well as to the issuance of a teacher's certificate by the State Board of Examiners. The statutes governing the qualifications of a permanent teaching staff member and for the acquisition of tenure require an applicant to demonstrate that he is a citizen of the United States or that such applicant has declared his intent of becoming a citizen of the United States. N.J.S.A. 18A:26-1; N.J.S.A. 18A:28-3. The State Board of Examiners in the Department of Education is empowered by law to issue a teacher's certificate to an alien only on the filing of a declaration of intention to become a United States citizen within 5 years. N.J.S.A. 18A:6-39; N.J.S.A. 18A:26-8.1.

The issue raised by your inquiry has been authoritatively resolved by the United States Supreme Court. In *Sugarman, et al. v. McL. Dougall, et al.*, 413 U.S. 634, 93 S.Ct. 2842, 37 L.Ed. 2d 853 (1973), it was held that a broad provision of the New York Civil Service Law which indiscriminately prohibited the employment of aliens in the competitive Civil Service was in violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. On the same day, the United States Supreme Court in a related case, *In Re Application of Griffiths*, 413 U.S. 717, 93 S.Ct. 2851, 37 L.Ed. 2d 910 (1973), held that a Connecticut rule of court, requiring an applicant for admission to the State Bar to be a United States citizen, created an inherently suspect classification that was unnecessary to promote or safeguard the legitimate interests of the State of Connecticut. The rule of court was found to be invalid as an unconstitutional infringement of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

ATTORNEY GENERAL

In *Sugarman, et al. v. McL. Dougall, et al.*, *supra*, the appellees were federally registered aliens and residents of the State of New York. The appellees were employed by non-profit organizations that received funds from the United States Office of Economic Opportunity. These federally funded programs were absorbed by the Human Resource Administration of the City of New York. The appellees were thereupon informed that they were ineligible for continued employment by the City and would be dismissed due to their alienage pursuant to the Civil Service law of the State of New York. In his opinion, Justice Blackmun restated the long established rule that a resident alien is entitled to the shelter of the Equal Protection Clause of the Fourteenth Amendment and that this protection extended to the right to work for a living in the common occupations of a community. The court found that an indiscriminate classification based on alienage is inherently suspect, and there is a substantial burden on the state to justify citizenship as a qualification for public office. The court opined:

“In *Graham v. Richardson*, 403 US, at 372, 29 L Ed 2d 534, we observed that aliens as a class ‘are a prime example of a “discrete and insular” minority (see *United States v. Carolene Products Co.* 304 US 144, 152-153, n 4, 82 L Ed 1234, 58 S Ct 778 (1938)),’ and that classifications based on alienage are ‘subject to close judicial scrutiny.’ And as long as a quarter century ago we held that the State’s power ‘to apply its laws exclusively to its alien inhabitants as a class is confined within narrow limits.’ *Takahashi v Fish Comm’n*, 334 US, at 420, 92 L Ed 1478. We therefore look to the substantiality of the State’s interest in enforcing the statute in question, and to the narrowness of the limits within which the discrimination is confined.

....

We hold that § 53, which denies all aliens the right to hold positions in New York’s classified competitive civil service, violates the Fourteenth Amendment’s equal protection guarantee.

....

While we rule that § 53 is unconstitutional, we do not hold that, on the basis of an individualized determination, an alien may not be refused, or discharged from, public employment, even on the basis of noncitizenship, if the refusal to hire, or the discharge, rests on legitimate state interests that relate to qualifications for a particular position or the characteristics of the employee. We hold only that a flat ban on the employment of aliens in positions that have little, if any, relation to a State’s legitimate interest, cannot withstand scrutiny under the Fourteenth Amendment.

Neither do we hold that a State may not, in an appropriately defined class of positions, require citizenship as a qualification for office. . . .”
Sugarman, et al. v. McL. Dougall, et al., 413 U.S. at 642, 646, 647.

The court reviewed several arguments made in support of the citizenship requirement and concluded that the State had not carried the burden of substantiating its legitimate interest in the imposition of a blanket citizenship requirement as a condition of holding an office or position in the classified Civil Service.

You are, therefore, advised that an indiscriminate statutory ban by reason of

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alienage on the employment and acquisition of tenure by teachers in the public schools, as well as on the issuance of a teacher's certificate by the State Board of Examiners is constitutionally offensive, unless a substantial or special circumstance inherent in a particular teaching classification requires United States citizenship as a qualification of such a teacher. In the event you are of the opinion that United States citizenship is a bona fide qualification for any teaching classification in the public schools of this State under the supervision of the Department of Education, kindly advise us of your justification in order that an individual determination may be made in those cases.

Sincerely yours,
WILLIAM F. HYLAND
Attorney General

By: THEODORE A. WINARD
Assistant Attorney General

October 3, 1974

JOSEPH A. HOFFMAN, *Commissioner*
Department of Labor and Industry
Labor and Industry Building
Trenton, New Jersey 08625

FORMAL OPINION NO. 11-1974

Dear Commissioner Hoffman:

You have requested an opinion as to whether it is permissible for persons who are not admitted to the bar of this or any other jurisdiction to represent unemployment compensation claimants or respondent employers at hearings conducted by the Appeal Tribunal and/or Board of Review. For the following reasons, you are advised that it is not permissible for non-attorneys to represent claimants or employers at such hearings.

The Division of Unemployment and Disability Insurance (formerly the Division of Employment Security) is constituted as an agency within the Department of Labor and Industry. N.J.S.A. 34:1A-14. Within the Division of Unemployment and Disability Insurance, an Appeal Tribunal was established to hear and decide disputed benefit claims. N.J.S.A. 34:1A-20; N.J.S.A. 43:21-6. In addition, a Board of Review was established to act as a final appeals board in cases of benefit disputes. N.J.S.A. 34:1A-19; N.J.S.A. 43:21-6. It is well-settled that the Appeal Tribunal and Board of Review are quasi-judicial bodies which are "...under a duty to consider evidence and apply the law to the facts as found and to exercise a discretion of judgement judicial in nature on evidentiary facts. . . ." *Adolph v. Elastic Stop Nut Corp. of America*, 18 N.J. Super. 543, 546-47 (App. Div. 1952); see also *Borgia v. Board of Review*, 21 N.J. Super. 462 (App. Div. 1952).

The practice of law in this State is governed by Article VI, § II, par. 3 of the