

FORMAL OPINION

June 13, 1979

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

FORMAL OPINION NO. 12—1979

Dear Dr. Burke:

The Department of Education has asked for our opinion as to the validity of United States citizenship requirements for teachers under a recent decision of the United States Supreme Court in *Ambach v. Norwick*, 441 U.S. 68 (1979).

The statute governing the qualifications of a permanent teaching staff member requires an applicant to be a citizen of the United States "except that any citizen of any other country, who has declared his intention of becoming a United States citizen and to whom there has been issued a teaching certificate in accordance with law, may be employed as a teacher so long as he holds a valid teacher's certificate . . ." N.J.S.A. 18A:26-1. The State Board of Examiners is authorized to issue a teacher's certificate to an alien who has declared his intention of becoming a United States citizen, but any such certificate may be revoked where the holder has either abandoned his efforts to become a United States citizen, or shall not have become a United States citizen within five years of the date of its issuance. N.J.S.A. 18A:26-8.1.

In *Formal Opinion No. 10—1974* we concluded that the indiscriminate ban set forth in the statutes on the employment and tenure of teachers who are aliens was constitutionally invalid in the absence of a special circumstance inherent in a particular teaching position. Our opinion was then premised on the holding of the United States Supreme Court in *Sugarman v. Dougall*, 413 U.S. 634 (1973). The Court held at that time that a broad provision of New York Civil Service law which indiscriminately prohibited the employment of aliens in the competitive civil service was in violation of the Fourteenth Amendment to the United States Constitution.

In *Ambach* the Court addressed the specific question as to the constitutional validity of a New York statutory ban on the employment of aliens as teachers in the New York public schools. That statute was in many respects similar to the governing New Jersey statutes insofar as it provides for a ban on the employment of persons as teachers who are not either citizens of the United States or have not made diligent application to become a citizen.

In *Ambach* the appellees satisfied all of the educational requirements set for certification as a public school teacher but consistently refused to seek citizenship in spite of their eligibility to do so. The Court reviewed its earlier decisions in this area and again recognized, as it had in *Sugarman*, that a state could "in an appropriately defined class of positions, require citizenship as a qualification for office." *Ambach, supra*, at 1593. The court stated that where a governmental function fulfilled a fundamental obligation of government to its constituency, it was within

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the authority of a state to exclude aliens from such governmental positions. *See also: Foley v. Connelie*, 435 U.S. 291 (1978). In its application of these principles to the case at hand, the court stated:

In determining whether, for purposes of equal protection analysis, teaching in public schools constitutes a governmental function, we look to the role of public education and to the degree of responsibility and discretion teachers possess in fulfilling that role. *See id.*, at 297. Each of these considerations supports the conclusion that public school teachers may be regarded as performing a task 'that go[es] to the heart of representative government.' *Sugarman v. Dougall*, *supra*, at 647.

Public education, like the police function, 'fulfills a most fundamental obligation of government to its constituency,' *Foley*, at 297. The importance of public schools in the preparation of individuals for participation as citizens, and in the preservation of the values on which our society rests, long has been recognized by our decisions:

'Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.' *Brown v. Board of Education*, 347 U.S. 483, 495 (1954). [*Ambach, supra*, at 76, 77.]

The Court concluded that since public school teachers perform an essential "governmental function" the New York statutory restriction bore a rational relationship to a legitimate state purpose and was consistent with the Fourteenth Amendment to the United States Constitution.

The New Jersey statutory scheme is essentially the same and serves similar purposes as the New York statutes considered in *Ambach*. You are therefore advised that those New Jersey statutes which require a teaching staff member to demonstrate that he is a citizen of the United States or has declared his intent of becoming a citizen are supported by a legitimate governmental purpose and are constitutionally valid.

Very truly yours,
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