



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

March 23, 1959

Honorable Dorsey B. Hardeman
Chairman
State Affairs Committee
Senate of Texas
Austin, Texas

Opinion No. WW-575

Re: Constitutionality of
Senate Bill 54, 56th
Legislature, relating
to eligibility require-
ments of persons who
may receive public wel-
fare benefits, and re-
lated questions.

Dear Senator Hardeman:

We have received your request of March 3, 1959, in which you seek our opinion on the validity of Senate Bill 54 of the 56th Legislature, relating to eligibility requirements of persons who may receive public welfare benefits or who may be admitted to eleemosynary institutions of this State.

Senate Bill 54 reads in part as follows:

"AN ACT relating to eligibility requirements of persons who may receive benefits from programs paid out of public funds and administered by the Board and Department of Public Welfare and admission to the eleemosynary institutions of this State by providing that the requirement of United States citizenship shall be waived as to any such person who meets the other requirements specified in this act; providing severability and declaring an emergency.

"BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

"Section 1. Notwithstanding any other provisions of statutes of this State, the requirement that one be a citizen of the

United States to be eligible to receive assistance from the Board and Department of Public Welfare under Title 20A, Revised Civil Statutes of Texas, as amended, or to be admitted to any eleemosynary institutions of this state under Title 51, Revised Civil Statutes of Texas, as amended, shall be waived and be of no force and effect as to any person who has

"(a) Resided in this State for at least twenty (20) years; and has either

"(1) A child who has served in the Armed Forces of the United States; or

"(2) Paid ad valorem taxes on property in this State while a resident thereof for a period of ten (10) years."

Section 2. (Provides severability.)

Section 3. (Declares an emergency.)

We shall first consider the effect of Senate Bill 54 as it relates to eligibility of persons to receive public funds administered and paid by the Board and Department of Public Welfare. Under Title 20A, V.A.C.S., the various public assistance programs are set out, as are the eligibility requirements therefor. A consistent requirement is that the recipient must be a citizen of the United States. As we interpret Senate Bill 54, it would have the effect of removing or "waiving" the requirement that recipients be citizens of the United States, provided they can show themselves to come under Section 1, Subsection (a) of Senate Bill 54.

Section 51 of Article III of the Constitution of Texas reads in part as follows:

"Sec. 51. The Legislature shall have no power to make any grant or authorize the making of any grant of public moneys to any individual, association of individuals, municipal or other corporations whatsoever; . . ." (With certain exceptions.)

By way of additional exceptions, Section 51a of Article III provides in part as follows:

"Sec. 51a. The Legislature shall have the power, by General Laws, to provide, subject to limitations and restrictions herein contained, and such other limitations, restrictions and regulations as may by the Legislature be deemed expedient for assistance to, and for the payment of assistance to:

"(1) Needy aged persons who are actual bona fide citizens of Texas, and who are over the age of sixty-five (65) years; . . ." (with certain other requirements set forth). (Emphasis added.)

"(2) Needy blind persons who are actual bona fide citizens of Texas and are over the age of twenty-one (21) years; . . ." (with certain other requirements set forth). (Emphasis added.)

"(3) Needy children who are actual bona fide citizens of Texas and are under the age of sixteen (16) years; . . ." (with certain other requirements set forth). (Emphasis added.)

"The Legislature shall have the authority to accept from the Federal Government of the United States such financial aid for the assistance of the needy aged, needy blind, and needy children as such Government may offer not inconsistent with restrictions herein set forth; provided, however, that the amount of such assistance out of State funds to each person assisted shall never exceed the amount so expended out of Federal funds; . . ."

Section 51a-1, Article III of the Constitution of Texas reads in part as follows:

"The Legislature shall have the power to provide by General Laws and to make payment for same, under such limitations and restrictions as may be deemed by the Legislature expedient, for

direct or vendor payments for medical care on behalf of needy recipients of Old Age Assistance, Aid to the Blind, or Aid to Dependent Children as provided for in Section 51a of Article III and on behalf of needy recipients of Aid to the Permanently and Totally Disabled as provided for in Section 51-b of Article III of the Constitution of the State of Texas. The payments for such medical care on behalf of such recipients shall be in addition to the direct assistance to such recipients, and shall be in such amounts as provided by the Legislature; provided, however, that the amounts paid out of State funds for such purposes shall never exceed the amounts paid out of Federal funds for such purposes.

"The Legislature shall have the authority to accept from the Federal Government of the United States, such financial aid on behalf of the needy aged, needy blind, needy children, and needy permanently and totally disabled persons as such Government may offer not inconsistent with restrictions herein set forth." (Emphasis added.)

Section 51-b of Article III reads in part as follows:

"Sec. 51-b. The Legislature shall have the power to provide by general laws, under such limitations and restrictions as may be deemed by the Legislature expedient, for assistance to needy individuals, who are citizens of the United States, who shall have passed their eighteenth (18th) birthday but have not passed their sixty-fifth (65th) birthday, who are totally and permanently disabled by reason of a mental or physical handicap or a combination of physical and mental handicaps and not feasible for vocational rehabilitation, and who are residents of the State of Texas, . . .

"The Legislature shall have the authority to accept from the Government of the United States such financial aid for individuals who

are permanently and totally disabled as that Government may offer not inconsistent with the restrictions herein provided." (Emphasis ours.)

Your attention is called to the fact that Section 51a provides that needy aged persons, needy blind persons, and needy children must be "citizens of Texas" in order to be eligible for the payments therein provided. Section 51a-1 provides for payments for medical care on behalf of needy recipients of old age assistance, aid to the blind, or aid to dependent children, as provided for in Sections 51a and 51-b, but restricts such payments to individuals "who are citizens of the United States." It is seen that in order for individuals to become eligible under the stated exceptions to Section 51 of Article III, they must be "citizens of Texas" or "citizens of the United States".

The funds provided by the various types of public assistance payments are partially composed of federal funds. In order for a recipient to be eligible, he must be eligible under the State law, as well as under the federal law and regulations. There is no requirement under the federal law that the recipient must be a citizen of the United States. It is merely provided that no State may have any citizenship requirement which excludes "any citizen of the United States". (See: 42 U.S. C.A. Sec. 302(b) (3)).

Section 51 of Article III prohibits the making of any such grant unless the recipient may bring himself within one of the exceptions enumerated in Sections 51, 51a, 51a-1 or 51-b.

Section 51-b of Article III authorizes payments thereunder only to ". . . citizens of the United States". Clearly any Act of the Legislature which attempted to "waive" or remove such requirement would violate that Section, as well as Section 51 of Article III. Section 51a and Section 51a-1 only require the recipient thereunder to be citizens of Texas. Senate Bill 54 would allow payments to be made to persons who, under certain conditions are not citizens of the United States. May a person be a citizen of Texas without being a citizen of the United States?

2 Tex. Jur. 677, Aliens § 2, states, in part:

". . . Generally speaking, a citizen is one who is a member of a nation or sovereign

State, especially of a republic; one who owes allegiance to a government, and is entitled to protection from it. By the federal constitution, 'All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside'. Citizens are to be distinguished from residents; the terms are neither synonymous nor interchangeable; while a citizen has the right of residence, citizenship is not implied from the fact of residence. Citizens are also distinguished from inhabitants -- who may be strangers -- allowed to settle and remain in a country. Aliens living in the state are inhabitants."

2 Am. Jur. 464, Aliens § 2, states, in part:

"The term 'alien' is defined by statute as comprehending any individual not a native-born or naturalized citizen of the United States. . . .

"The term also includes subjects and citizens of foreign countries, and not merely persons resident in the United States who owe allegiance elsewhere. Residence in the United States is without effect to change the status of a person as an alien; and it is now settled that the term 'aliens' as used in the Immigration Laws, includes not only 'alien immigrants' but every alien, irrespective of any previous residence or domicile in this county."

The early case of Ex Parte Blumer, (Supreme Court) 27 Tex. 735 (1865), the Court considered who were residents of the Confederate States for the purpose of conscription. The Court said at page 737:

"The Congress of the Confederate States designed that the term should include more than citizens, native and naturalized, otherwise the word citizen would have been used . . ."

This certainly implies that a citizenship requirement is more restrictive than a mere residence requirement.

In Town of New Hartford v. Town of Canaan, 5 A. 360, the Supreme Court of Errors of Connecticut, considered whether the son of a naturalized citizen of the United States acquired the status of a citizen of that State. The Court discussed the attributes of citizenship and said that:

" . . . The right of citizenship as distinguished from alienage, is a national right, character, or condition, and does not pertain to the individual states, separately considered.
. . . "

It is well settled that a person may be a citizen of the United States without being a citizen of any particular State. (For example, a resident of the District of Columbia, or the children of United States Ambassadors abroad); but we have found only one case intimating the converse.

In McDonel v. State (Supreme Court Ind.) 90 Ind. 320 (1883), the Court said:

"One may be a citizen of a State and yet not a citizen of the United States."

However, the Court goes on to say:

" . . . in most of the States of the Union persons who are not citizens of the United States are not admitted to State citizenship."

It is, therefore, our opinion that the provisions of Senate Bill 54, which seek to waive the requirement that one be a citizen of the United States to be eligible to receive assistance from the Board and Department of Public Welfare under Title 20 A, V.A.C.S., as amended, is prohibited by Sections 51, 51a, 51a-1 and 51-b of Article III of the Constitution of the State of Texas. Section 51a of Article III of the Constitution of Texas uses the term "citizens" of Texas. This Bill would allow persons to receive such funds without being a citizen of Texas even though they reside in the State of Texas and have resided in this county for a period of twenty years or longer; and had a child who served in the Armed Forces of the United States or paid ad valorem taxes on property in this State while a resident for a period

of ten (10) years. These people are inhabitants of the State who have been allowed to settle and remain in this country and State. They are aliens and remain as such until they have been naturalized according to law. In our opinion, Senate Bill 54 violates Sections 51, 51a, 51a-1 and 51-b of Article III of the Constitution of Texas insofar as it purports to allow persons not citizens of Texas to receive public assistance payments.

Insofar as Senate Bill 54 relates to eligibility of persons who are not citizens of the United States for admission to any eleemosynary institution of this State under Title 51, V.A.C.S., as amended, we find no constitutional prerequisite setting forth who may be admitted to such institutions. In this connection see Attorney General's Opinion O-2223 (1940). Therefore, in our opinion it is within the discretion of the Legislature to prescribe the eligibility requirements for admission into the various eleemosynary institutions. Senate Bill 54 does not violate the Constitution of Texas insofar as it relates to admissions to such institutions. Reference is made to Attorney General's Opinion WW-251 (1957) which names the eleemosynary institutions of Texas.

We find no violations of the Constitution of Texas by Senate Bill 54 other than as set out above.

SUMMARY

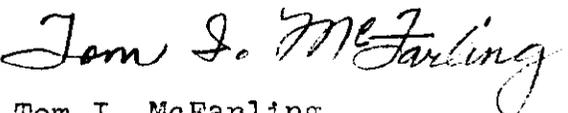
Senate Bill 54 of the 56th Legislature violates Sections 51, 51a, 51a-1 and 51-b of Article III of the Constitution of Texas insofar as it allows public assistance payments to persons not citizens of the United States, because United States citizenship is a prerequisite to being a citizen of Texas.

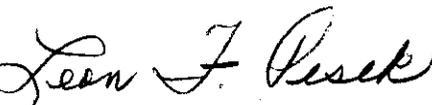
Honorable Dorsey B. Hardeman, page 9 (WW-575)

Senate Bill 54 of the 56th Legislature
is constitutional insofar as it relates
to admission requirements to the eleemo-
synary institutions.

Yours very truly,

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APPROVED:

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