S T A T E O F T E N N E S S E E
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Opinion No. 06-022

Emergency 911 Employment of Aliens

QUESTIONS

1. Is there any statutory prohibition against employment of an alien (non-citizen) as a 911 call-taker or dispatcher?

2. If the answer is "yes," what course of action is recommended if a particular 911 District currently employs a non-citizen as a call-taker/ dispatcher?

OPINIONS

1. Yes. Tenn. Code Ann. § 7-86-205 specifically requires that "all emergency call takers or public safety dispatchers" be "a citizen of the United States."

2. This Office recommends that a 911 District employing a non-citizen dispatcher abide by the mandates of § 7-86-205, unless and until a court of competent jurisdiction declares the statute unconstitutional.

ANALYSIS

1. Tennessee Code Annotated § 7-86-205 sets forth the statutory requirements of emergency call takers and public safety dispatchers. One of the enumerated requirements is that the call taker or dispatcher be a citizen of the United States. Tenn. Code Ann. § 7-86-205(d)(2). Thus, a 911 District that employs a non-citizen violates this law.

2. This Office recommends that the 911 District comply with Tenn. Code Ann. § 7-86-205(d)(2). However, it should be noted that the statute is vulnerable to a constitutional challenge. In limited situations, a state may make citizenship a requirement for certain positions. For instance, in *Foley v. Connelie*, 435 U.S. 291 (1978), the United States Supreme Court upheld a New York statute prohibiting non-citizens from being employed as state troopers. *See also Cabell v. Chavez-Salido*, 454 U.S. 432 (1982) (upholding *Foley* where non-citizens challenged a California statute requiring probation officers to be United States citizens); *Ambach v. Norwick*, 441 U.S. 68 (1979) (upholding a statute requiring school teachers to be United States citizens). In these situations, the United States Supreme Court has concluded that the job at issue is one that "fulfills a most fundamental obligation of government" and provides the employee with a "very high degree

of judgment and discretion." *Foley*, 435 U.S. at 297-99. These jobs are not "to be equated with a private person engaged in routine public employment or other 'common occupations of the community' who exercises no broad power over people generally." *Id.* at 299. Rather, the positions are "intimately related to the process of democratic self-government." *Bernal v. Fainter*, 467 U.S. 216, 220 (1984). The determining factor is whether the position is such that "the officeholder would necessarily exercise broad discretionary power over the formulation or execution of public policies importantly affecting the citizen population-- power of the sort that a self-governing community could properly entrust only to full-fledged members of that community." *Id.* at 224.

Thus, courts have struck down statutes making United States citizenship a requirement for a notary public, *Bernal*, 467 U.S. at 228, private civil engineers, *Examining Board v. Flores de Otero*, 426 U.S. 572 (1979), admission to the Connecticut bar, *In re Griffiths*, 413 U.S. 717 (1973), permanent positions in the competitive class of the New York civil service, *Sugarman v. Dougall*, 413 U.S. 634 (1973), and even airport security screeners, *Gebin v. Mineta*, 231 F. Supp. 2d 971 (C.D. Cal 2002). Nevertheless, the 911 District should abide by Tenn. Code Ann. § 7-86-205(d) unless and until a court of competent jurisdiction (i.e., a Tennessee court, the Sixth Circuit, or the United States Supreme Court) strikes it, or a statute that is materially indistinguishable from it, down.[1]

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[1] At least as of today's date, the Board members would enjoy qualified immunity in any action brought by someone aggrieved by the enforcement of the statutory restriction because non-citizens have no clearly established constitutional or statutory right to be employed as emergency dispatchers. *See Harlow v. Fitzgerald*, 457 U.S. 800 (1982).