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SPRINGFIELD



June 15, 1976

FILE NO. 8-1106

CONSTITUTION:
Equal Protection

Honorable Peter J. Woods
State's Attorney
Ogle County
Courthouse
Oregon, Illinois 61061

Dear Mr. Woods:

I have your letter requesting my opinion as to the constitutionality of the one year residency requirement provided for in section 2 of "AN ACT to regulate the granting of assistance to indigent war veterans". (Ill. Rev. Stat. 1975, ch. 23, par. 3082.) Section 2 provides in pertinent part:

"For the assistance of indigent and suffering veterans, * * * their families, and the families of deceased veterans who need assistance, the supervisor of general assistance or the county board shall provide such sums of money as may be just and necessary * * * . Such sums

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of money shall be drawn in the manner now provided by law for the assistance of the poor. No veteran, or the families of those deceased shall be given assistance unless he or they are and have been residents of this State for one year or more. * * * "

The answer to your question is to be found, in my opinion, in the decision of the United States Supreme Court in Shapiro v. Thompson, 394 U.S. 618. In Shapiro the court held unconstitutional several statutes which denied welfare assistance to persons who had not resided within the jurisdiction for one year or more. The court pointed out at page 627 that:

"There is no dispute that the effect of the waiting-period requirement in each case is to create two classes of needy resident families indistinguishable from each other except that one is composed of residents who have resided a year or more, and the second of residents who have resided less than a year, in the jurisdiction. On the basis of this sole difference the first class is granted and the second class is denied welfare aid upon which may depend the ability of the families to obtain the very means to subsist — food, shelter, and other necessities of life. * * * "

The court then observed that since the classification involved served to "penalize" the exercise of the constitutional right of interstate travel, it constituted a violation of the equal protection clause of the fourteenth amendment unless it could

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be said to be necessary to promote a "compelling governmental interest". The court in Shapiro found no such compelling interest.

In Memorial Hospital v. Maricopa County, 415 U.S. 250, the court once again applied the rationale of the Shapiro case, this time holding unconstitutional an Arizona statute requiring one year's residence in the county as a condition of receiving certain medical care at the county's expense. The court observed at page 261 that:

"* * * [T]he right of interstate travel must be seen as insuring new residents the same right to vital government benefits and privileges in the States to which they migrate as are enjoyed by other residents. * * *"

The Supreme Court of Illinois recently had occasion to apply the rule of the Shapiro case in People ex rel. Holland v. Bleigh Constr. Co., 61 Ill. 2d 258. At issue there was the constitutionality of "AN ACT to give preference in the construction of public works projects and improvements to citizens of the United States who have resided in Illinois for one year." (Ill. Rev. Stat. 1975, ch. 48, pars. 269 et seq.) One of the constitutional challenges raised concerned the one year residency requirement of section 1 of the Act. (Ill. Rev.

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Stat. 1975, ch. 48, par. 269.) With regard to this challenge the court concluded at page 271 that:

" * * * [T]he one-year residency requirement for eligibility as an Illinois laborer under the statute creates an 'invidious classification' that 'penalizes' the right of interstate travel by denying new residents a 'vital government benefit and privilege.' This classification can be sustained only on a showing of a compelling State interest and plaintiff has not met the heavy burden of justification. We hold, therefore, that the one-year residency requirement violates the equal protection clause of the Federal and the Illinois constitutions.

* * *

The statute with which you are concerned involves the grant of public assistance to indigent war veterans and the families of deceased veterans. Such assistance clearly qualifies, in my opinion, as a "vital governmental benefit and privilege" within the meaning of the Shapiro and Memorial Hospital cases. Furthermore, it is my opinion that the one year residency requirement of the statute at issue here serves to "penalize" those veterans or their families who seek to exercise their constitutionally guaranteed right of interstate travel. This residency requirement, therefore, cannot stand unless it can be said to be necessary to promote a compelling State interest.

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I am, of course, unable to state conclusively that no compelling State interest exists for the residency requirement contained in this statute. It is possible, however, to list those governmental interests that the courts have not found to be sufficiently compelling to justify the imposition of a penalty on the right of interstate travel. The Illinois Supreme Court in the Holland case, for example, has summarized at page 268 the supposedly compelling State interests rejected by the court in Shapiro as follows:

" * * * [T]he fiscal integrity of State public aid programs; the past contribution made to the community through the payment of taxes; budget planning and predictability; administrative efficiency in determining residency by an objective standard; the need to safeguard against fraudulent receipt of benefits; and encouraging new residents to seek employment.

* * *

No additional governmental interests were suggested in either the Holland case itself or the Memorial Hospital decision.

It is, therefore, my opinion that absent a showing of a compelling State interest, the one year residency requirement of section 2 of "AN ACT to regulate the granting of assistance to indigent war veterans" violates the equal

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protection clause of the fourteenth amendment to the United States Constitution.

Very truly yours,

A T T O R N E Y G E N E R A L