

June 23, 1972

Honorable James S. Ushijima  
County Clerk  
County of Maui  
Wailuku, Maui, Hawaii

Re: Qualification of Potential  
Candidate, Mrs. Peggy S. L.  
Ross, for the Office of Mayor

Dear Sir:

This is in response to your request for an opinion regarding the qualification of potential candidate Mrs. Peggy S. L. Ross for the Office of Mayor. This office has been apprised of the following facts as to the qualification of Mrs. Ross as a resident in this County:

1. Mrs. Peggy S. L. Ross, of 2094 Pakahi Street, Wailuku, established her residency in the County of Maui in February, 1971, and has lived here continuously since that time. To this date, she has been a resident of the County for less than 18 months; and
2. She registered as a voter in the County of Maui on May 24, 1972.

Section 7-2 of the Charter of the County of Maui, in pertinent part, states:

"Any citizen of the United States not less than thirty (30) years of age who has been a voter of the county for at least three years prior to his election shall be eligible to fill the office of mayor." (Emphasis added.)

June 23, 1972.

Under the provisions of this section, Mrs. Ross is clearly not eligible to fill the Office of Mayor. However, this office is of the opinion that Section 7-2 is violative of the Equal Protection Clause of the Constitution of the United States.

Whether a statute stands in violation of the Equal Protection Clause involves essentially an examination of three criteria: "the character of the classification in question; the individual interests affected by the classification; and the governmental interests asserted in support of the classification". Dunn v. Blumstein, 92 S.Ct. 995, 999; 31 L.Ed. 2d 274, 280 (1972).

In Dunn v. Blumstein, *supra*, the U. S. Supreme Court held that the one-year residency requirement for voters in Tennessee was in violation of the Equal Protection Clause. The Court stated that a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction. While this equal right to vote is not absolute, any restriction and regulation of access to the franchise must meet close constitutional scrutiny.

Freedom to travel throughout the United States and to enter and abide in any state of the Union is also a basic constitutional right. In order that a state may constitutionally deprive any citizen of a fundamental right such as the right to vote or penalize a citizen for exercising a fundamental right such as the right to travel, that state must show that the measure is necessary to protect a compelling state interest.

The Court concluded that durational residence voting requirements are not necessary to further a compelling state interest and thus are unconstitutional under the Equal Protection Clause.

The Supreme Court of Hawaii, in York v. State, \_\_\_ Haw. \_\_\_ (1972), held that the State may not deny employment to

persons who have less than three-years residency in the State. The Court referred to H.R.S. Sec. 78-1(a), which reads in pertinent part as follows:

"All officers, whether elective or appointive, and all employees in the service of the government of the state or in the service of any county or municipal subdivision of the state . . . shall be . . . residents of the state for at least three (3) years immediately preceding their appointment." (Emphasis added.)

The Court concluded that "The discrimination imposed by H.R.S. Sec. 78-1(a) denies arbitrarily to certain persons, merely because of their status as residents of less than 3 years duration, the right to pursue otherwise lawful occupations. It is therefore unconstitutional".

In the companion cases of Camara v. Mellon, 484 P.2d 577, 4 Cal.3d 714, 94 Cal.Rptr. 601 (1971), and Zeilina v. Nelson, 484 P.2d 578, 94 Cal.Rptr. 602 (1971), the California Supreme Court was faced with the exact same issue of durational residency requirements for candidates for public offices as now raised here.

The Camara case, supra, involved Section 602 of the Santa Cruz City Charter, which read in pertinent part as follows:

"No person shall be eligible to be . . . a member of the council unless he . . . shall have been for at least three (3) years preceding his election or appointment a resident of the City of Santa Cruz . . . ."

The California Court stated, ". . . we have concluded that the challenged Santa Cruz charter provision violates the Equal Protection Clause of the Fourteenth Amendment to the federal Constitution".

June 23, 1972

In Zeilinger v. Nelson, *supra*, the California Court quoted with approval from Gonzalez v. Rosengard, 44 N.J. 166, 207 A.2d 665, 667 (1965), where the New Jersey Court stated:

"The right to vote would be empty indeed if it did not include the right of choice for whom to vote . . . . This does not mean there must be perfect equality between the two . . . . But it does mean that in judging the validity of a restraint upon eligibility for elective office, we must be mindful that the restraint is upon the right to vote as well . . . ."

"Far from being unrestricted, the power to prescribe qualifications for elective office is sharply limited by the constitutional guarantee of a right to vote. A prescribed qualification for office must relate to the needs of officeholding as such as the special needs of the particular office involved, with the voters free to judge the personal or individual fitness of the candidates who have those basic qualifications. The line separating the basic needs of office from individual fitness of a candidate, perhaps more easily felt than described, is vital, and the fundamental value involved is best served if the judiciary insists that the reason for inroads upon the right to vote be real and clear and compelling."

The California Court went on to conclude at page 582:

"Since the right to run for public office is as fundamental a right as is the right to vote, we have carefully scrutinized the residence restriction in the Butte County Charter. Having done so we are not convinced that the five-year provision constitutes the least restrictive method of achieving the desired purpose, namely a reasonable knowledge by a proposed candidate of the general requirements of his county."

Bolanowski v. Raich, 330 F. Supp. 724 (1971) was an action by a potential candidate for the Office of Mayor for judgment determining that the three-year residency requirement for mayoral candidates unreasonably burdened his right to run for office and the right of electors to vote for a candidate of their choice in violation of the Equal Protection Clause. The U. S. District Court for the District of Michigan held that the three-year residency requirement for mayoral candidates which operate to exclude potential candidates for consideration by the voters of the city was invalid as being in violation of the Equal Protection Clause.

Since Section 7-2 of the Charter of the County of Maui is similar to those reviewed above in Bolanowski, Zeilinga and Camara, it appears that the section stands in violation of the Equal Protection Clause of the federal Constitution. The case of Dunn v. Blumstein, *supra*, handed down by the highest court in the land on April 25, 1972, is indicative of the current status of the law regarding durational residency requirements for access to the franchise. Additionally, the recent action by the Hawaii Supreme Court, in finding H.R.S. 78-1(a) constitutionally invalid, thereby removing the three-year residency requirement for candidates to the state legislature, makes more evident the constitutional invalidity of Section 7-2 of the Charter of the County of Maui.

Very truly yours,

*Melvyn T. Yoshii*  
Melvyn T. Yoshii  
Deputy County Attorney

MTY:dg

cc: Honorable Elmer F. Cravalho  
Honorable Goro Hokama

REVIEWED AND APPROVED:

*B. G. D. Hoshino*

County Attorney