



DEPARTMENT OF LAW  
OFFICE OF THE  
**Attorney General**  
STATE CAPITOL  
Phoenix, Arizona 85007

*See copy*

BRUCE E. BABBITT  
ATTORNEY GENERAL

November 7, 1977

LAW LIBRARY  
ARIZONA STATE CAPITOL

The Honorable Steve Vukceovich  
Arizona State Representative  
House Wing, State Capitol  
Phoenix, Arizona 85007

Re: 77-205 (R77-314)

Dear Representative Vukceovich:

This is in response to your letter of September 22, 1977 in which you asked if Article 4, Part 2, Section 5 of the Constitution of Arizona is in violation of the "privileges or immunities" clause found in Section 1 of the Fourteenth Amendment to the United States Constitution. For the reasons stated below, we have concluded that the Arizona provision does not violate the federal prohibition.

Article 4, Part 2, Section 5 of the Constitution of Arizona provides as follows:

No member of the Legislature, during the term for which he shall have been elected or appointed shall be eligible to hold any other office or be otherwise employed by the State of Arizona or, any county or incorporated city or town thereof. This prohibition shall not extend to the office of school trustee, nor to employment as a teacher or instructor in the public school system.

Section 1 of the Fourteenth Amendment contains the following language:

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. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (Emphasis added.)

The Honorable Steve Vukceovich  
November 7, 1977  
Page Two

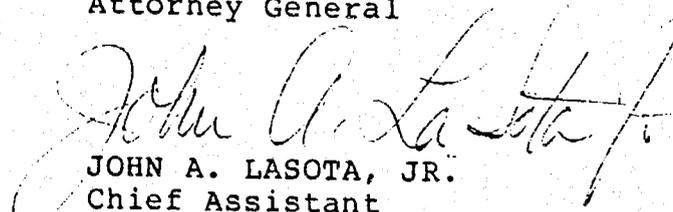
It has long been recognized that the privileges and immunities protected by the Fourteenth Amendment " . . . are only those that belong to citizens of the United States as distinguished from citizens of the states--those that arise from the Constitution and laws of the United States as contrasted with those that spring from other sources." Hamilton v. Regents of the University of California, 55 S.Ct. 197, 203, 293 U.S. 245, 261 (1934). See also, Slaughter-House Cases, 16 Wall. (83 U.S.) 36 (1873), Prudential Ins. Co. of America v. Cheek, 259 U.S. 530, 42 S.Ct. 516 (1922); Valley Nat. Bank of Phoenix v. Glover, 62 Ariz. 538, 159 P.2d 292 (1945). Thus not all state actions which abridge a privilege or immunity of a citizen violate Section 1 of the Fourteenth Amendment of the United States Constitution.

Article 4, Part 2, Section 5 of the Constitution of Arizona clearly curtails certain rights of a state legislator: during the term for which he has been elected or appointed, he is prohibited from holding any other office of the State of Arizona (with certain exceptions). But the Fourteenth Amendment is violated only if the right of a legislator simultaneously or coterminously to hold another state office arises from the Constitution and laws of the United States. It is our view that such a right does not arise from these sources and therefore is not within the protection of Section 1 of the Fourteenth Amendment.

Based upon the above discussion, our conclusion is that Article 4, Part 2, Section 5 of the Constitution of Arizona is not in violation of the "privileges or immunities" clause of Section 1 of the Fourteenth Amendment to the United States Constitution. We hope we have been of assistance to you in this matter.

Yours very truly,

BRUCE E. BABBITT  
Attorney General

  
JOHN A. LASOTA, JR.  
Chief Assistant  
Attorney General

JAL:JG:jrs