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May 8, 1958
Opinion No. 58-70

REQUESTED BY: Yuma County Attorney
OPINION BY: ROBERT MORRISON
The Attorney General
QUESTION: May the County Hospital of Yuma
County employ alien doctors,
technicians or specialists?
CONCLUSION: No.

The problem requires consideration of Article 18, Section 10, of the Constitution of Arizona, and the statutes enacted pursuant thereto. The relevant part of Article 18, Section 10, supra, reads:

"§ 10. Employment of aliens

Section 10. (Employment of aliens.) No person not a citizen or ward of the United States shall be employed upon or in connection with any state, county or municipal works or employment *** The legislature shall enact laws for the enforcement and shall provide for the punishment of any violation of this section."

Pursuant to this section, the legislature enacted the following statute, which reads:

"§ 34-301. Employment of aliens on public works prohibited

A. A person not a citizen or ward of the United States shall not be employed upon or in connection with any state, county or municipal works or employment.

*****"

Does the language used in the Constitution and Statute permit a county hospital to hire alien doctors, technicians or specialists? We think not. It is well settled in this jurisdiction that, unless there is ambiguity, a constitutional provision requires no interpretation. Moreover, it is equally well settled that some meaning must be given to each phrase of the Constitution, unless giving the words their grammatical and common meaning would create a doubt. Porter v. Hall, 34 Ariz. 308, 271 Pac. 411; Adams v. Bolin, 74 Ariz. 269, 247 P.2d 617.

We are impressed by the simplicity and clarity of the language used in Article 18, Section 10, supra. Two propositions are stated therein. First, that no aliens may be employed in public "works"; second, that no aliens may be employed in public "employment".

A.R.S. § 23-615 defines the term "employment" as follows:

"Employment

'Employment' means any service of whatever nature performed by an employee for the person employing him, * * * and includes:

1. An individual's entire service performed within or both within and without this state
* * *

It is plain that the legislature feels that the term is a broad and general scope. Many court decisions have taken this view. In Glenn v. Beard, 141 F.2d 376, 377, the Court said:

"* * * Employment under this statute is to be understood in its ordinary sense, as meaning the legal relationship of employer and employee* * * "

Finally, in McClain v. Church, 72 Ariz. 354, the Arizona Supreme Court, in discussing the Employment Security Act, following the view of other courts, said at page 357:

"* * * The pertinent statutory definition of employment * * * means any service * * * performed for wages or under any contract for hire, written or oral, express or implied."

It is clear, therefore, that by legislative definition, as well as court decisions, the term "employment" is given a broad, inclusive meaning and is understood to encompass all classes of employment.

We must conclude that the word "employment" as used in Article 18, Section 10, has reference to municipal, county and state "employment" activities.

In a prior opinion, No. 50-117, this office expressed its view on the hiring of alien internes furnished by a private hospital by contract to be used in the County Hospital. There it was said that:

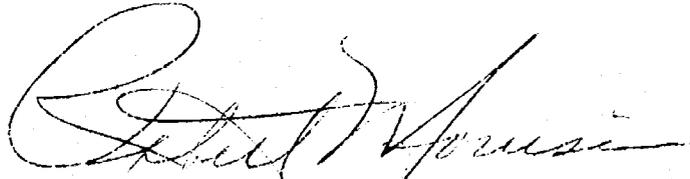
"From the limitations and restrictions placed on the board of supervisors by the Constitution of Arizona, laws as enacted by the Legislature * * * we are of the opinion that the Maricopa County Board of Supervisors cannot legally contract with St. Monica's to furnish (alien) internes for the Maricopa County Hospital."
(Parenthetical material added)

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That the conclusions expressed herein are in harmony with the intent of Article 18, Section 10, is further supported by the fact that in 1956 this provision was amended to permit foreign teachers, instructors and professors under the Federal Exchange Program to be used in the State educational system. The amendment did not extend to alien doctors, technicians or specialists.

For the foregoing reasons, it is the opinion of the Department of Law that the Yuma County Hospital cannot hire alien doctors, technicians or specialists.



ROBERT MORRISON
The Attorney General

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