STATE OF TENNESSEE
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April 20, 2005

Opinion No. 05-053

Hiring a Non-United States Citizen as a State Trooper

QUESTIONS

1. May the Department of Safety Highway Patrol, a law enforcement agency, currently hire a person who is not a United States citizen as a Trooper? Could the Department legally have done so in 1998?

2. May the Department of Safety Highway Patrol, a law enforcement agency, currently hire a person who is a lawful, permanent resident of the United States as a Trooper? Could the Department legally have done so in 1998?

OPINIONS

1. Yes, the Department of Safety is not legally barred from hiring a non-citizen, nor was the Department barred from doing so in 1998. However, the Department of Safety currently has in place a qualification that an applicant for a trooper position must be a U.S. citizen, although that qualification does not have the force of law.

2. Yes, the Department of Safety can legally hire a lawful permanent resident as a trooper currently, and the Department could have done so in 1998.

ANALYSIS

1. In *Foley v. Connelie*, 435 U.S. 291, 293 (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). Tennessee Code Annotated, Title 38, Chapter 8, addresses the employment and training of law enforcement officers in this State. Section 38-8-105(a) provides that the "[r]equirements for minimum standards as set forth in this part or as required by the commission shall be mandatory and binding upon any municipality, county, or political subdivision of this state." This office has previously opined that "minimum standards," as set forth in Tenn. Code. Ann. § 38-8-105(a), include the qualifications in

Tenn. Code. Ann. § 38-8-106. Op. Tenn. Att'y. Gen. 82-198 (1982). Among these statutory qualifications is the requirement that the officer must be "a citizen of the United States." Tenn. Code. Ann. § 38-8-106(2).

Notwithstanding the foregoing, Tenn. Code. Ann. § 38-8-105(a) expressly limits its application to "any municipality, county, or political subdivision of this state." This office has previously opined that "political subdivision of this state" refers to geographic or territorial divisions rather than functional divisions of state government, and thus, the statute has no application to law enforcement officers employed by the state of Tennessee. Op. Tenn. Att'y. Gen. 84-247 (1984). Neither federal nor state law prohibits the Department of Safety from hiring a non-citizen as a trooper, and the status of the law was the same in 1998. Accordingly, barring any qualifications imposed on the position by the Department of Safety,[1] the Department can currently hire a non-citizen as a trooper and could have done so in 1998.

2. The fact that the applicant is a legal, permanent resident, rather than a non-citizen, does not alter this office's opinion and analysis as stated above.

PAUL G. SUMMERS
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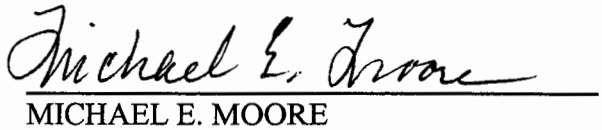

MICHAEL E. MOORE
Solicitor General

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[1]This opinion letter is based upon an analysis of state and federal law. It is the understanding of this office that the Department of Safety's current "Class Specification" for the trooper position, which only became effective September 24, 2004, includes a "Necessary Special Qualification" that the applicant must be a U.S. citizen. Because it is merely a statement concerning the internal management of state government that does not affect the private rights, privileges, or procedures available to the public, this qualification is not a rule and does not have the force of law. *See* Tenn. Code. Ann. § 4-5-102(10)(A). Thus, provided it does so in a manner consistent with state and federal law, the Department can interpret, apply, or modify the requirement at its discretion. *See Tenn. Dept. of Mental Health and Mental Retardation v. Allison*, 833 S.W.2d 82, 85 (Tenn. Ct. App. 1992) ("[O]fficers of a department or agency cannot adopt rules to circumvent statutes passed by the legislature."); *Bush v. State*, No. 01C01-9605-CR-00204, 1997 WL 414595, *2 (Tenn. Crim. App.) (once the legislature, exercising its delegated powers, has decided the policy in a given area, it is for the executive department to administer the laws).