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ATTORNEY GENERAL OPINION NO. 91-10

TO: Mr. Gary Bermeosolo, Administrator
Division of Veterans Services
Department of Health and Welfare
Idaho Veterans Home
Statehouse Mail

Per Request for Attorney General's Opinion

QUESTION PRESENTED:

Are the durational residency requirements which Idaho Code §§ 65-203 and 66-901 place on Idaho veterans to determine eligibility for emergency relief assistance and admission to a state veterans' home constitutional?

CONCLUSION:

The durational residency requirements contained in Idaho Code §§ 65-203 and 66-901 are unconstitutional because they impinge on the fundamental right to migrate and because they deny newcomer resident veterans equal protection of the law.

ANALYSIS:

Idaho Code § 65-203 defines "veteran" for the purposes of providing emergency relief and public assistance. It states:

65-203. "Veteran" defined. The word veteran as used in this chapter shall include any honorably discharged person who was an actual resident of the state of Idaho

for a period of at least three (3) months immediately before his or her entry into the armed forces of the United States, or who has been an actual resident of the state of Idaho for a period of at least three (3) years next preceding the date of his or her application for relief and who was regularly enlisted, drafted, inducted or commissioned and who served on active duty in the armed forces of the United States at some time during any period of war recognized by the United States department of veterans affairs for the purpose of awarding federal veterans benefits as may be defined in title 38, U.S. code, chapter 1, section 101(11); or, who, being a citizen and resident of the state of Idaho, at the time of his or her entry therein, or who has been an actual resident of the state of Idaho for at least three (3) consecutive years immediately preceding the date of his or her application for relief, served on active duty in the naval, military or air forces of any of the governments associated with the United States during said periods; provided, that no person shall be entitled to any benefits under this chapter (a) who being in the armed forces of the United States or of any of the governments associated with the United States during said periods, refused on conscientious, political, or other grounds, to be subject to military discipline or unqualified service; or (b) who being in such service was separated therefrom under circumstances amounting to dishonorable discharge or discharge without honor; provided, however, that nothing in this chapter contained shall prevent said Idaho veterans affairs commission from rendering every possible aid and assistance to any honorably discharged veteran, or his or her dependents, except grants of direct relief shall be confined to veterans and their dependents as defined herein. Any aid or assistance, which is determined by the commission to be duplicated in any manner by any other agency or organization authorized by the veterans administration, may not be rendered by said commission. (Emphasis added.)

Idaho Code § 66-901 provides the eligibility requirements for admission to an Idaho state veterans' home. It states:

66-901. Establishment of homes. There shall be established in the department of health and welfare in this state homes for veterans which shall hereafter be

known and designated as Idaho State Veterans Homes, which institutions shall be homes for honorably discharged male and female veterans who had actual service during any war or conflict officially engaged in by the government of the United States and for members of the state national guard disabled while in the line of duty who did not refuse military duty on account of conscientious objection; provided, that before a person is admitted to a home he shall have been a bona fide resident of this state for not less than two (2) years prior to making application for admission thereto. But such residence shall not be required of any person who, at the time of his enlistment or induction into such service, was a bona fide resident of this state. (Emphasis added.)

Together, these two statutes govern eligibility for emergency relief, public assistance and admission to medical and nursing home care in an Idaho state veterans' home. Under their terms, unless a veteran was an Idaho resident at the time of entry into the armed services, he is denied emergency relief and public assistance if he has not been an Idaho resident for three years, and he is denied admission to a veterans' home if he has not been an Idaho resident for two years. This is so even if he is a bona fide resident at the time he applies for the services at issue. By placing these durational residency requirements upon veterans, Idaho Code §§ 65-203 and 66-901 unconstitutionally burden the right to migrate and constitute a denial of equal protection of the laws.

The United States Supreme Court has repeatedly addressed state laws that, by classifying residents according to the time they establish residence, result in the unequal distribution of rights and benefits among otherwise qualified bona fide residents. See, e.g., Attorney General of N.Y. v. Soto-Lopez, 476 U.S. 898 (1986); Zobel v. Williams, 457 U.S. 55 (1982); Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974); and Shapiro v. Thompson, 394 U.S. 618 (1969). In analyzing these durational residency statutes, the Court has relied upon both the equal protection clause of the Fourteenth Amendment and the right to migrate. See Soto-Lopez, 476 U.S. at 901-904. However, as the Court has noted, regardless of the label it places upon its analysis--right to migrate or equal protection--the standard of review is the same. Because the right to migrate is fundamental, if a durational residency requirement burdens that right, the requirement will be strictly scrutinized and must be justified by a compelling state interest. *Id.* at 904, n. 4.

While the criteria used to determine whether the right to migrate has been burdened are not entirely clear, it appears the Supreme Court will find the right has been burdened if a durational residency requirement results in either a delay of "a very important" right or benefit or a permanent deprivation of a substantial right or benefit. *Id.* at 907-908. The Supreme Court has characterized important benefits and rights as those encompassing the "necessities of life." Thus, in Shapiro v. Thompson, *supra*, durational residency requirements affecting welfare assistance were struck down. Likewise, in Memorial Hospital v. Maricopa County, *supra*, a one-year residency requirement affecting nonemergency hospitalization and medical care for the indigent was held unconstitutional.¹ The Supreme Court has not defined a substantial right. However, the term appears to be broad, as both points on a civil service exam and dividends derived from a state's natural resources have been held to fall within its scope. See Soto-Lopez, *supra*, and Zobel v. Williams, *supra*.

In our case, Idaho Code §§ 65-203 and 66-901 cause newcomer veteran residents up to three years' delay in receiving emergency relief and public assistance and up to two years' delay in gaining admission to an Idaho veterans' home. The Supreme Court has already held that medical care and assistance to the financially needy are necessities of life and therefore important benefits. Shapiro, *supra*, and Memorial Hospital, *supra*. The benefits affected by Idaho Code §§ 65-203 and 66-901 are sufficiently akin to those at issue in Shapiro and Memorial Hospital that they, too, qualify as "important." Therefore, Idaho Code §§ 65-203 and 66-901 should be strictly scrutinized to determine if they are constitutional.

In order to withstand this level of scrutiny, the statutes must be justified by a compelling state interest. Soto-Lopez, *supra*, at 904. It is unlikely this can be demonstrated. In Shapiro and Memorial Hospital, the Supreme Court rejected

¹ Worth noting is that the Court has upheld durational residency requirements affecting access to divorce courts and college tuition. See Sosna v. Iowa, 419 U.S. 393 (1975) (upholding a one-year residency condition for maintaining a divorce action); Starns v. Malkerson, 401 U.S. 985 (1971), *summarily aff'g* 326 F. Supp. 234 (Minn. 1970) (sustaining domicile requirement which incorporated one-year waiting period for resident tuition at state university).

numerous arguments supporting durational residency requirements affecting welfare assistance and medical care for the poor, including the fiscal integrity of state welfare programs, facilitating planning of a welfare budget, and the provision of an objective test of residency.

Added to this is the Court's analysis in Soto-Lopez, *supra*, where it addressed a durational residency requirement which permanently deprived newcomer New York veterans of a substantial right--points on a civil service exam. There, the Court remarked that veterans serve the "nation as a whole" and that states benefit from the contributions of all service personnel. *Id.* at 911. The Court went on to reject every argument offered by New York to support the durational residency requirement and declared the requirement unconstitutional. *Id.* In short, it is our opinion that a court is unlikely to find that applying additional residency requirements to distinguish between different groups of bona fide resident veterans in allocating emergency relief, public assistance and veterans' home services furthers any compelling state interest.

SUMMARY:

The durational residency requirements contained in Idaho Code §§ 65-203 and 66-901 temporarily deny some bona fide resident veterans important benefits. In so doing, the statutes burden the fundamental right to migrate. Consequently, if challenged, they would be strictly scrutinized by a court and would only be found constitutional if they were justified by a compelling state interest. It is our opinion that these statutes could not be found to further a compelling state interest. Therefore, they violate the equal protection clause of the Fourteenth Amendment and unconstitutionally impinge on the fundamental right to migrate.

AUTHORITIES CONSIDERED:

1. Constitutions

United States Constitution, Fourteenth Amendment.

2. Statutes

Idaho Code § 65-203.

Idaho Code § 66-901.

3. Cases

Attorney General of New York v. Soto-Lopez, 476 U.S. 898 (1986).

Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974).

Shapiro v. Thompson, 394 U.S. 618 (1969).

Sosna v. Iowa, 419 U.S. 393 (1975).

Starns v. Malkerson, 401 U.S. 985 (1971).

Zobel v. Williams, 457 U.S. 55 (1982).

DATED this 19 day of December, 1991.

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ANALYSIS BY:

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