

at its will. They have no vested rights in their office, their charters, their corporate powers, or even their corporate existence. This is the universal rule of constitutional law, and in no state has it been more clearly expressed and more uniformly applied than in Pennsylvania....The fact that the action of the State towards its municipal agents may be unwise, unjust, oppressive, or violative of the natural or political rights of their citizens, is not one which can be made the basis of action by the judiciary."

Accordingly, the Solicitation of Charitable Funds Act does regulate a local library which is under municipal control.

### CONCLUSION

Local libraries must be considered charitable educational organizations under the Solicitation of Charitable Funds Act. The Legislature has not granted local libraries an exemption from registering with the Commission on Charitable Solicitations. Local libraries which are controlled by municipalities are also under the control of the Solicitation of Charitable Funds Act. It is therefore concluded and you are hereby advised that any local library which solicits funds from the public must adhere to the requirements of the Solicitation of Charitable Funds Act.

Very truly yours,

Robert J. Dixon  
*Deputy Attorney General*

Israel Packel  
*Attorney General*

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### OFFICIAL OPINION No. 15.

*Labor Relations—Collective Bargaining—Public Employee Relations Act*

1. The granting of a retroactive pay increase in a collective bargaining agreement, where no prior agreement has been reached on the amount of compensation due, is not a violation of Article III, §26 of the Pennsylvania Constitution.

Harrisburg, Pa.  
March 25, 1974

Hon. Paul J. Smith, Secretary  
Department of Labor and Industry  
Harrisburg, Pennsylvania

Dear Secretary Smith:

You have requested our opinion with respect to the following question:

Is the granting of a retroactive pay adjustment in a collective bargaining agreement prohibited as being extra compensation within the meaning of Article III, §26 of the Pennsylvania Constitution which provides in relevant part:

No bill shall be passed giving any extra compensation to any public officer, servant, employe, agent or contractor after services shall have been rendered or contract made....

In Official Opinion No. 11 of 1974 dated February 15, 1974, 4 Pa. B. 436, a similar question was raised as to whether overtime payments made to State employes and approved *retroactively* under 4 Pa. Code §27.54(b) are a violation of Article III, §26. In that Opinion, we said:

Because Section 215 of the Administrative Code prospectively authorizes overtime payments, compensation provided pursuant to Section 215 and to regulations of the Executive Board is not "extra compensation." Such payments are normal compensation for overtime service. Therefore, Section 27.54(b) does not conflict with Article III, §26 of the Pennsylvania Constitution.

In short, because the Executive Board has given proper advance authorization for certain types of overtime compensation in Section 27.54, that section does not provide for retroactive approval of overtime compensation in violation of either Section 215 of the Administrative Code or of Article III, § 26 of the Pennsylvania Constitution.

In our judgment, the same rationale applies here. The Public Employe Relations Act of July 23, 1970, P.L. 563, 43 P.S. §1101.101 *et seq.* authorizes the negotiation of collective bargaining agreements by public employers and their employes with respect to wages, hours and other terms and conditions of employment "and the execution of a written contract incorporating any agreement reached...." 43 P.S. §1101.701. It is often the case that agreement cannot be reached until after the date of expiration of the previous contract or, in the case of the first collective bargaining agreement, after the date that the Legislature has duly authorized the negotiation of a collective bargaining agreement. Since it is to the benefit of all concerned that our public employes continue to serve pending final agreement on contract terms, they often do so with the clear understanding that the amount of compensation due shall be determined at a later date.

Given the prior authorization by the Legislature of this procedure in the Public Employe Relations Act and given the fact that the amount of compensation to be paid each employe during such period has not been fixed, so that it can hardly be said that "extra" compensation will be paid, it is our opinion, and you are so advised, that the

granting of a retroactive pay increase in a collective bargaining agreement is not a violation of Article III, § 26 of the Pennsylvania Constitution.<sup>1</sup>

Sincerely,

Mark P. Widoff  
*Deputy Attorney General*

Israel Packel  
*Attorney General*

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OFFICIAL OPINION No. 16

*Aliens—Licences—Boiler Law*

1. Regulation prohibiting otherwise qualified aliens from becoming licensed inspectors under the Boiler Law, 35 P.S. 1301 *et seq.* is to be treated as violative of the Fourteenth Amendment and is not to be enforced.
2. There is no essential governmental interest to be served by requiring all boiler inspectors to be United States citizens.
3. Regulations on reciprocal certificates are unlawful in that they conflict with the clear terms of the Boiler Law by placing qualifications on the granting of such certificates not authorized nor contemplated by the Act.

Harrisburg, Pa.  
March 25, 1974

Honorable Paul J. Smith  
Secretary of Labor and Industry  
Harrisburg, Pennsylvania

Dear Secretary Smith:

You have requested a formal opinion concerning Section 5 of the Boiler Law, 35 P.S. §1301 *et seq.* Specifically, you asked whether Items 4 and 7 of *Part II, Administration* of the Regulations for Boilers and Unfired Pressure Vessels, promulgated pursuant to the above-cited Act, are lawful. This answer will deal with Items 4 and 7 separately.

I.

Item 4 of *Part II, Administration* of the Regulations, promulgated pursuant to the Boiler Law, reads in part as follows:

“An applicant for examination shall be a citizen of the United States.”

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<sup>1</sup> It need hardly be stated, of course, that once the amount of compensation has been agreed upon in a duly executed collective bargaining agreement, such amount may not be later increased retroactively.