

ALLEGIANCE AND THE JAMAICAN CONSTITUTION

There is much public discussion about the qualifications of Jamaicans who are also foreign nationals or citizens to be appointed to the Senate or elected to the House of Representatives. Much of the discussion has been driven by partisan emotional considerations rather than objective rationality.

The framers of the Constitution of Jamaica by inserting Sections 39, 40 (2) (a) and 41 (1) (c) sought to ensure that only persons who have undivided loyalties to Jamaica serve in the Legislature. Those whom we elect to govern must have but one allegiance, one loyalty, if we are to entrust them with our governance. They must not be capable of being improperly influenced by a foreign power to which they also owe allegiance and loyalty.

Section 39 of the Constitution sets out a primary qualification for appointment to the Senate or nomination for election to the House of Representatives. It provides that:-

"Subject to the provisions of Section 40 of this Constitution, any person, who at the date of his appointment or nomination for election

(a) is a Commonwealth citizen of the age of twenty-one years or upwards; and

(b) has been ordinarily resident in Jamaica for the immediately preceding twelve months,

shall be qualified to be appointed as a Senator or elected as a member of the House of Representatives **and no other person shall be so Qualified.**"

A Commonwealth citizen, who is also a citizen of a foreign power or state, is more than just a Commonwealth citizen. Such a person falls under the category of "other person" and is not qualified to be nominated. Those who are Jamaicans but also hold foreign nationality or citizenship whether of the U.S.A, Venezuela, Cuba, Panama, China, Taiwan, Russia, Vietnam, Iraq, Afghanistan or any other foreign state or power do not meet the primary qualification for nomination for election under Section 39.

Section 40 of our Constitution deals with persons who, though meeting the primary qualification under Section 39, are not qualified to be appointed a Senator or elected to the House of Representatives by virtue of their status. That status is just one of several clearly set out in Section 40 of the Constitution. These are:-

- I . Persons holding, or acting in, any office the functions of which involve any responsibility for, or in connection with, the conduct of any election, or any responsibility for the compilation or revision of any electoral Register. e.g. the Director of Elections.
2. A person who is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a foreign Power or State.
3. A person who holds or is acting in any public office or the office of Judge of the Supreme Court or Judge of the Court of Appeal or, save as is otherwise provided by Parliament, is a member of a defence force.
4. A Person who is a party to, or a partner in a firm or a director or manager of a company which to his knowledge is a party to, any contract with the Government of Jamaica for or on account of the public service.

5. A person who has been adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged.
6. A person who is, under any law for the time being in force in Jamaica, certified to be insane or otherwise adjudged to be of unsound mind or detained as a criminal lunatic.
7. A person who is disqualified for membership of the House of Representatives by or under any law for the time being in force in Jamaica because he has been convicted of any offence connected with the election of members of that House or of any local authority or body for local purposes.
8. A person who is a Senator is not qualified for election to the House of Representatives even though he may be qualified to be nominated by virtue of meeting the primary qualification for nomination in Section 39.

Clearly, being under an acknowledgement of allegiance, obedience or adherence to a foreign power or state is only one "status" a Jamaican may hold which would make him not qualified for appointment to the Senate or election to the House of Representatives. A Judge of the Supreme Court or Court of Appeal, for example, is not qualified to be elected although technically qualified to be nominated.

Jamaicans working for foreign governments, foreign embassies or agencies may be not only under an acknowledgement of obedience but also under an acknowledgement of allegiance to a foreign power or state whether or not they are citizens of that foreign power or state and therefore not qualified.

There are four main ways in which someone may owe 'allegiance' to a foreign power or state. First, persons owe 'natural allegiance' to their country of birth. Second, naturalized citizens owe 'acquired allegiance' to that country. Third, aliens while residing in a country owe 'local allegiance' to the country of their residence. Fourth, people who take an oath of allegiance or people born abroad of natural-born citizens of the realm owe 'legal allegiance'.

A seat may also become vacant where certain circumstances exist. Among the circumstances rendering a seat vacant under the provisions of Section 41 (1) (d) are:

- (1) if he ceases to be a Commonwealth citizen or takes any oath or makes any declaration or acknowledgment of allegiance, obedience or adherence to any foreign Power or State or does, concurs in or adopts any act done with the intention that he shall become a subject or citizen of any foreign Power or State and
- (2) if he is absent from sittings of the House for such period and in such circumstances as may be prescribed by the Standing Orders of that House.

The provisions contained in Sections 39, Section 40 (2) (a) as well as Section 41 (1) (d) of the Constitution of Jamaica are designed to ensure that Jamaica's legislators do not have split

allegiances, have undivided loyalty to Jamaica, and are not in a position to be improperly influenced by a foreign power or state to whom they owe allegiance and loyalty.

Thus, only persons with undivided loyalty and allegiance to Jamaica, are qualified for nomination or election to the House of Representatives or appointment to the Senate. It works no other way.

Consider a person born in the United States to Canadian parents. By virtue of his birth in the United States, he is a U.S. citizen. He is also a citizen of Canada as both his parents are Canadian citizens. He therefore holds dual nationality and dual citizenship. He has no control over the fact of his birth as a U.S. citizen. He did not seek Canadian citizenship but acquired same by derivation. The fact that he is a Canadian citizen means he is also a Commonwealth citizen and he has been residing in Jamaica with a work permit for the past three years.

The arguments of those who would seek to interpret the constitutional provisions to suit their own partisan interests would allow for this American/Canadian (Commonwealth citizen), with no connection to Jamaica, to qualify for election to the House of Representatives. The framers of the Constitution could never have intended and certainly did not intend that such a person be qualified for election to the House of Representatives or for appointment to the Senate. Their interpretation would reduce our constitutional provisions to such an absurdity that Jamaica would become the laughing stock of the world.

Most countries have constitutions which provide that persons who owe allegiance to a foreign power or state, whether they have dual nationality or not, are not qualified to be elected to their legislature. Other countries are presently reviewing their Constitutions with a view to preventing persons holding dual nationality from being eligible to serve in their legislatures and providing that only nationals of their country are qualified to be elected.

It is timely therefore that Section 39 of our Constitution be amended to remove the Commonwealth qualification and make it clear that only Jamaicans who do not hold dual nationality or citizenship qualify for appointment to the Senate or nomination for election to the House of Representatives.

David P. Rowe is a Professor of Law at the University of Miami School of Law and the St. Thomas University School of Law. [Click here](#) to read Dr. David P. Rowe's profile

Copyright © 2007 The Law Offices of David P. Rowe & Rosemarie D. Robinson. You may reproduce materials available at this site for your own personal use and for non-commercial distribution. All copies must include this copyright statement.

[Return from Allegiance and the Jamaican Constitution to Constitution and Rights Home Page](#)