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STATE OF ILLINOIS
SPRINGFIELD

September 29, 1971

FILE NO. S-335

ELECTION:
Registration of 18 Year Olds

Honorable Arthur A. Telcser
State Representative
State of Illinois
525 West Roscoe Street
Chicago, Illinois 60657

Dear Mr. Telcser:

This will acknowledge your letter of September 9, 1971 as follows:

> "It has come to my attention through the news media that certain counties in the state may be imposing higher qualifications for the registration to vote of certain 18 year old applicants than are required by statute.
>
> If so, the propriety of such action is certain to be raised at the forthcoming session of the General Assembly. In order that I may be properly prepared to act if new legislation is introduced, I would appreciate your opinion on the legality of the alleged registration requirements."

Public Law 91-285 passed by Congress and approved by the President on June 22, 1970 established 18 as the age

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of eligibility to vote for the President, Vice President and members of Congress. On August 6, 1970 the then Secretary of State asked my opinion about registration of such voters in Illinois. My opinion No. S-213 issued August 24, 1970 stated the law was presumed to be constitutional unless and until the United States Supreme Court decided otherwise in cases brought by other states. The opinion concluded that anyone 18 years of age or over who was otherwise qualified to vote in Illinois could register for elections to be held after January 1, 1971, the effective date of Public Law 91-285.

My opinion then added that such registrations should be kept readily separable from the regular list since such registrants could vote only for Federal officers. In view of the adoption this Spring of an amendment to the United States Constitution, such separation of registrants is no longer necessary. The new amendment reads:

> "The right of citizens of the United States, who are eighteen years of age or older to vote shall not be denied or abridged by the United States or by any State on account of age."

As stated in my opinion S-213, a federal constitutional amendment supercedes inconsistent provisons of a state constitution.

Our new Constitution adopted December 15, 1970 provided for the contingency of a federal amendment in Article III, Section 1 as follows:

> "Every United States citizen who has attained the age of 21 or any other voting age required by the United States for voting in State elections and who has been a permanent resident of this State for at least six months next preceding any election shall have the right to vote at such election. The General Assembly by law may establish registration requirements and require permanent residence in an election district not to exceed thirty days prior to an election. The General Assembly by law may establish shorter residence requirements for voting for President and Vice-President of the United States."

Under these two constitutional provisions anyone who has attained the age of eighteen, and is otherwise qualified under the laws of Illinois has the same voting right as any other Illinois voter. Under Chapter 46, Section 4-2, such an individual has exactly the same right to register under identical conditions, as any other qualified voter. The present statutory requirements for registration in Illinois provide only for proof of age, six months residence in the state and thirty days in the precinct. Those requirements, and only those requirements, are applicable to registrants 18 years of age as well as those over 21.

Your letter states some counties may be imposing higher qualifications for those under 21 who apply for registration. I understand these include questions to students concerning parental financial assistance, inquiries as to residence shown on driver's license or automobile registration certificates, and refusal to register those living in dormitories, fraternity houses, or other types of residence usually considered as being temporary in nature.

The official accepting registration must follow the statute. As to applicants under 21, he can only ask the type of questions which have always been asked of those over 21. He cannot supplement the statutory requirements nor refuse registration to anyone over 18 who files the necessary affidavit required by statute.

The type of questions mentioned, however, may be highly pertinent should challenges be filed to an individual's right to vote. This is true in view of unusual changes made in the new Constitution.

The Constitution of 1870 in Article VII, Section 1 provided a right to vote for "every person having resided in this State one year * * *." The new Constitution in Article

III, Section 1, quoted above, requires, however, that such a citizen "has been a permanent resident of this State for at least 6 months next preceding any election." The requirement of "permanent residence" is very significant. Even though the Constitution of 1870 referred only to "residence" in the State for one year, the General Assembly in Chapter 46, Section 4-2 provided "to constitute residence under this Act, a permanent abode and dwelling place within the precinct are necessary." Decisions of the Supreme Court which will be referred to hereafter purported to define only the question of "residence" but often referred to the statutory requirement of "permanent" abode and dwelling place. The new Constitution by incorporating the words "permanent residence" as a qualification for voting necessarily adopted the comments of the Supreme Court on the element of permanence.

The new Constitution, as quoted above, further provided "The General Assembly by law may establish registration requirements and require permanent residence in an election district not to exceed 30 days prior to an election." The use in the Constitution of the new word "permanent" with reference to election districts seems to implement what the

General Assembly tried to do when the Constitution made no reference to a "permanent" residence.

You were a sponsor of HB 3021 which endeavored to set up criteria under which the element of "permanent" residence in the precinct could be determined. As I understand, this bill had only first reading in June and was never passed.

As the General Assembly has not yet established new registration requirements as permitted by the Constitution, the old statute is still applicable. As noted above, Chapter 46, Section 4-2 provided that voting residence required "a permanent abode and dwelling place within the precinct."

The addition of the word "permanent" in the new Constitution as applying to the necessary residential qualification, cannot be ignored. It implements the position taken previously by the General Assembly. I am advised the debates in the Constitutional Convention indicated an intention to adopt the tests specified in several Illinois Supreme Court decisions under the old Constitution covering the circumstances and conditions used in determining whether an individual is a resident for voting purposes. In any event the word "permanent" must be accepted in its ordinary

meaning. In Graham vs. Dye, 308 Ill. 283, at page 286 our Supreme Court said:

> "* * * * * The intent and meaning of the constitution are to be determined from the language used in its provisions. We said in People v. Stevenson, 281 Ill. 17: 'As a constitution is dependent upon adoption by the people, the language used will be understood in the sense most obvious to the common understanding. The language and words of a constitution unless they be technical words and phrases, will be given effect according to their usual and ordinary signification, and courts will not disregard the plain and ordinary meaning of the words used, to search for some other conjectural intention.' In City of Beardstown, v. City of Virginia, 76 Ill. 34, the court said, in the construction of the meaning of constitution provisions the intent is determined from the meaning of the words used, and that when words have a definite meaning it is not allowable to go elsewhere in search of conjecture or resort to subtle or forced construction for the purpose of limiting or extending their meaning and effect."

A number of Supreme Court decisions on the right of students to vote are very important. In Walsh vs. Shumway, 232 Ill. 54 at pages 87 and 88, the Court said:

> "Where a person of mature years leaves the home of his parents, relying upon his own efforts and means, with no fixed determination as to future residence, he is a legal voter, if otherwise qualified, wherever he may attend college. (McCrary on Elections, - 4th ed. - p. 75, note 4.) * * *

In Cooley's Constitutional Limitations (7th ed. p. 904,) the rule is laid down that a student in an institution of learning, as a resident there for the purpose of instruction, may have a residence at such place, provided he is emancipated from his father's family and for the time has no home elsewhere. * * *

A student in a college town is presumed not to have the right to vote. If he attempts to vote, the burden is upon him to prove his residence at that place, and it must be done by other evidence than his mere presence in the town. (10 Am. & Eng. Ency. of Law, - 2d ed. - p. 605.) The fact that a student has resided in a college town the necessary length of time does not, of itself, entitle him to vote there. If he supports himself entirely by his own efforts, is not subject to parental control, regards the place where the college is situated as his home, even though he may at some future time intend to remove, has the intention of making it his present abiding place, and has no positive and fixed intention as to where he will locate when he leaves, he is entitled to vote; * * *"

In Anderson vs. Pifer, 315 Ill. 164 at pages 167 and 168, the Court said:

"A permanent abode is necessary to constitute a residence. (Smith's Stat. 1923, chap. 46, sec. 66.) 'Residence' and 'permanent abode' are synonymous terms. (Johnson v. People, 94 Ill. 505.) Whether a college student is entitled to vote because his permanent abode is at the place of the college is one of fact. One cannot have a residence in two places at the same time. (Dale v. Irwin, 78 Ill. 170.) The mere presence of the student at the place of the college is not sufficient to entitle him to vote His residence

must be bona fide with no intention of returning to the parental home. College students entirely free from parental control, who regard the college town as their home and who have no other home to return to in case of sickness or other affliction, are legal voters (Dale v. Irwin, Supra; Welsh v. Shumway, 232 Ill. 54.) The question of residence is one largely of intention, and a voter is competent to testify as to his intention, but such testimony is not conclusive. * * *

We can add nothing to the rules laid down in the cases cited as to what constitutes one a resident and legal voter. Some students are by the legal test laid down voters at the place where they are attending college, but they are comparatively small in number compared to the whole student body. None of the fifteen students here challenged met the required test to render them legal voters. There are many thousand students attending universities and colleges in Illinois for the purpose of getting an education who are wholly or in part paying their way through the institutions. Most of them come from homes of parents to which they return at vacation time or to which they would return in case of sickness or affliction. To hold that all such students were legal voters at the place of the college would be doing violence to the legal requirements to constitute one a legal voter, and would have a very large influence in giving students the power to control local elections and local governmental questions where large educational institutions are located. The fact that a student does not expect to return home to live after he finished school is not a very important one, for most persons attending universities and colleges expect, when they graduate, to enter some kind of business for themselves. We are satisfied the students objected to did not possess the qualifications of legal voters and the court erred in holding they were legal voters. * * *"

In People ex rel Moran vs. Teolis, 20 Ill. 2d 95 at page 106, the Court said:

> "A real and not an imaginary abode occupied as a home or dwelling is essential to satisfy the residential qualifications for voting prescribed by law. The question of residence is largely one of intention, although the voter's testimony of his intent is not necessarily controlling. (Coffey v. Board of Election Commissioners, 375 Ill. 385.) * * *"

From the comments made herein above, it is my opinion that an applicant under 21 who applies for registration must receive the identical treatment and be subject to the same inquiries as apply to those voters 21 and over. This means also that voters under 21 must meet the permanent residence requirements; if there is a reasonable doubt that they do, their right to vote at the particular place where they registered is subject to challenge.

Very truly yours,

ATTORNEY GENERAL