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FILE NO. S-451

**ELECTIONS:
Voting Residence Requirements**

Honorable Jack Hoogasian
State's Attorney
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Waukegan, Illinois 60085

Dear Mr. Hoogasian:

I have your recent letter wherein you state:

"Your opinion is requested in an interpretation of the opinion by the United States Supreme Court in Dunn v. Blumstein, 70-13 40 LW 4269, which deals with residence requirements in elections and how that determination, if at all, affects the residence requirement in the State of Illinois.

The residence requirement of Illinoisans is defined in Chapter 46, Article 3, Section 3-1, Illinois Revised Statutes, which reads:

'Every person having resided in this State 6 months and in the election district 30 days next preceding any election therein, and who is a citizen of the United States, above the age of 21 years is entitled to vote at such election for all offices and for all propositions.'

The second paragraph thereof states that any person residing in the State of Illinois less than 6 months, but residing in the election district 30 days next preceding a presidential election who is a citizen of the United States and of the qualified voting age, may be entitled to vote for a president and vice president electors, but for no other office or proposition.

What affect, if any, does the Dunn v. Blumstein decision have upon the residence qualification of the voters in the State of Illinois. Your opinion in this matter is appreciated."

The 1970 Illinois Constitution, Article III, Section 1,

provides:

"VOTING QUALIFICATIONS. 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."

Section 3-1 of "An Act concerning elections," (Ill. Rev. Stats., 1971, Ch. 46, par. 3-1), provides as follows:

"Every person having resided in this state 6 months and in the election district 30 days next preceding any election therein, and who is a citizen of the United States, above the age of 21 years is entitled to vote at such election for all offices and on all propositions. Any military establishment within the boundaries of Illinois as set forth in Article I of the Constitution of Illinois is 'in this State' even though the government of the United States may have exclusive jurisdiction over such establishment.

A person who has resided in this State less than 6 months, but who has resided in the election district 30 days next preceding a presidential election who is a citizen of the United States of the age of 21 or more years, and who is not entitled to vote for presidential or vice presidential electors in any other state or county, but who was a qualified elector in another state or county immediately prior to his removal to this State or his present county of residence, as the case may be, or would have been eligible to vote in any other county or state had he remained there until such election, is entitled to vote for presidential and vice presidential electors in such election, but for no other office or on any proposition."

Section 4-2 of "An Act concerning elections," (Ill. Rev. Stats., 1971, Ch. 46, par. 4-2), provides:

"No person shall be entitled to be registered in and from any precinct unless such person shall by

by the date of the election next following have resided in the State 6 months and within the precinct 30 days and be otherwise qualified to vote at such election. Every applicant who shall be 21 years of age or over on the day of the next election shall be permitted to register, if otherwise qualified.

To constitute residence under this Act, a permanent abode and dwelling place within the precinct are necessary."

As far as the age requirement is concerned, I have previously held that the Illinois requirement of 21 years has been superseded by the 26th amendment to the United States Constitution so that now anyone who has attained the age of 18 and is otherwise qualified under the laws of Illinois, has the same voting right as any other Illinois voter. See Opinion No. AS-335 which was issued by this office on September 29, 1971.

You have inquired about the Illinois residence requirement in view of the United States Supreme Court opinion in Dunn v. Blumstein, No. 70-13, 40 LW 4269. In that case, the State of Tennessee as a qualification for voting required residence in the state for one year and in the county for three months. The court held that these durational residence requirements were violative of the Equal Protection clause of the 14th

amendment, as they were not necessary to further a compelling state interest. The court said in this case:

Fixing a constitutionally acceptable period is surely a matter of degree. It is sufficient to note here that 30 days appears to be an ample period of time for the state to complete whatever administrative tasks are necessary to prevent fraud--and a year, or three months, too much.***"

The court further stated:

***Given modern communications, and given the clear indication that campaign spending and voter education occur largely during the month before an election, the State cannot seriously maintain that it is 'necessary' to reside for a year in the State and three months in the county in order to be minimally knowledgeable about congressional, state or even purely local elections. There is simply nothing in the record to support the conclusive presumption that residents who have lived in the State for less than a year and their county for less than three months are uninformed about elections. Cf. Shapiro v. Thompson, *supra*, 394 U.S., at 631. These durational residence requirements crudely exclude large numbers of fully qualified people. Especially since Tennessee creates a waiting period by closing registration books 30 days before an election, there can be no basis for arguing that any durational residence requirement is also needed to assure knowledgeability.

***"

While the court has been most explicit as to the invalidity of the durational (added emphasis) residence requirements, the court made the distinction that:

We have in the past noted approvingly that the States have the power to require that voters be bona fide residents of the relevant political subdivision. E.g., Evans v. Cornman, supra, 398 U.S., at 422; Kramer v. Union Free School District, supra, 395 U.S., at 625; Carrington v. Rash, supra, 380 U.S., at 91; Pope v. Williams, 193 U.S. 621 (1904). An appropriately defined and uniformly applied requirement of bona fide residence may be necessary to preserve the basic conception of a political community, and therefore could withstand close constitutional scrutiny. Fontham v. McKeithen, -F. Supp.- (Civ. 71-2631, Dec. 7, 1971, p.12)."

The rationale of the court's distinction is that:

The main concern is that nonresidents will temporarily invade the State or county, falsely swear that they are residents to become eligible to vote, and, voting, allow a candidate to win by fraud. Surely the prevention of such fraud is a legitimate and compelling government goal."

The above appears to leave intact the Illinois requirement that the voter be a bona fide resident of Illinois:

"Bona fide residence" for Illinois electoral purposes means a settled, fixed dwelling within the jurisdiction, and no present intention of permanently removing therefrom. Welsh v. Shumway, 232 Ill. 54; Johnson v. People, 94 Ill. 505."

In my opinion the Dunn v. Blumstein decision does have an effect upon the residence qualification of the voters in Illinois. The case does not appear to make much of a distinction between state and county durational residence requirements. It declares that a state residence requirement of one year and a county requirement of three months are both too long. It indicates that 30 days appears to be an ample period of time for both. Under this holding, certainly a state durational residence requirement of 6 months in the state would be invalid. I am of the opinion that the 6 month in the state durational residence requirement of Section 1 of Article III of the 1970 Illinois Constitution and of the statutes previously cited is violative of the Equal Protection clause of the fourteenth amendment to the United States Constitution. In order to vote, however, a person must have resided in the election district or precinct at least 30 days next preceding the election.

Very truly yours,

A T T O R N E Y G E N E R A L