

OPINION
71-143

September 1, 1971 (OPINION)

Mr. Richard B. Thomas

State's Attorney

Ward County

RE: Elections - Residency - College Students

This is in response to your letter in which you state that it is desirable to have a ruling as to where eighteen-year-old persons are permitted to vote. This question arises as the result of the ratification of the Twenty-sixth Amendment to the United States Constitution. With your request you forwarded a letter from the North Dakota Students Association in which they contend that since census counts a resident student as part of a college town's population entitling it to a greater legislative representation and more federal and state aid, they should be allowed to vote there.

It is understandable that the method of crediting or allocating persons to the place where they are at the time of taking census, regardless of where their legal residence may be, prompted the question. In applying the one-man, one-vote concept it might suggest superficiality or even appear that a person should vote or be able to vote where he is counted, or at the place to which he is allocated or credited, for population purposes.

However, by applying this rationale, it would be lending credit and compounding what already is a disparity in the system itself as far as the internal affairs of the state are concerned. In making this observation, no criticism is intended of the census bureau or the methods employed by it. We recognize that the federal census is designed primarily to satisfy federal or national requirements which we believe they do, but at the same time this system is wanting and for certain local intrastate purposes, creates a disparity, particularly as to representation in the legislative assembly. We would suggest that with all of the emphasis placed on the one-man, one-vote concept, that a system be employed which would aid and support such concept rather than detract or dilute. The true one-man, one-vote concept implies representation on the basis of votes or eligible votes.

As to the question in point, the procedures or methods employed by the census bureau are not basic criteria for establishing residence, nor do such methods or procedures amend or repeal constitutional or statutory methods of determining and establishing residence. Neither do such procedures or methods actually change legal residence. The mere fact that a person states his place of abode or domicile to be a certain place for purposes of completing a census report does not necessarily change or establish a legal residence. Under some instances, it can be used as probative evidence.

The laws under which legal residence may be acquired or changed have

not been modified or amended as a result of the census.

The basic rules for establishing residence, or in determining where the residence is, are found in Section 54-01-26 and are as follows:

"RESIDENCE - RULES FOR DETERMINING. Every person has in law a residence. In determining the place of residence the following rules shall be observed:

1. It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he returns in seasons of repose;
2. There can only be one residence;
3. A residence cannot be lost until another is gained;
4. The residence of the father during his life, and after his death, the residence of the mother, while she remains unmarried, is the residence of the unmarried minor children;
5. The residence of the husband is presumptively the residence of the wife except in the case of establishing residence for voting purposes;
6. The residence of an unmarried minor who has a parent living cannot be changed by either his own act or that of his guardian; and
7. The residence can be changed only by the union of act and intent."

In addition to the foregoing, to be eligible to vote, a person must also satisfy constitutional and statutory provisions. Article 40 of the North Dakota Constitution is the basic law setting forth the qualifications of an elector or voter. It provides as follows:

"North Dakota: Every qualified elector, who shall have resided in the state one year, in the county ninety days and in the precinct thirty days next preceding any election, shall be entitled to vote at such election. Provided that where a qualified elector moves from one precinct to another within the state he shall be entitled to vote in the precinct from which he moves until he establishes his residence in the precinct to which he moves."

The qualifications of an elector are also set out in Section 16-01-03 which provides as follows:

"QUALIFICATIONS OF ELECTORS. Any person of the age of twenty-one years or upwards, who has resided in this state one year, in the county ninety days, and in the precinct thirty days next preceding any election, except as otherwise provided in regard to residency in chapter 16-16, shall be a qualified elector at such election if he is a citizen of the United States. Any person between the ages of eighteen and

twenty-one, who is a citizen of the United States and is otherwise qualified as an elector, shall be entitled to vote for elected federal officials at any election in which a federal official is to be elected."

Section 16-01-05 corresponds basically to the same provisions set forth in Article 40 of the Constitution and provides as follows:

"VOTING BY QUALIFIED ELECTOR MOVING FROM ONE PRECINCT TO ANOTHER. Where a qualified elector moves from one precinct to another precinct within this state, he shall be entitled to vote in the precinct from which he moved until he establishes his residence in the precinct to which he moves."

The aforementioned legal residence requirements for voting purposes have not been altered either by the Twenty-sixth Amendment to the United States Constitution nor by the methods and procedures employed by the census bureau. The basic requirements still remain that a person must be a resident of the state for one year, county for ninety days and in the precinct for thirty days to be eligible to vote.

The Twenty-sixth Amendment basically provides that an eighteen-year-old person shall not be denied the right to vote because of age. This in effect places an eighteen-year-old person in the same status as a twenty-one-year-old person was formerly placed.

The North Dakota Legislature amended Section 14-10-01 which defines minors as follows:

" 'MINORS' DEFINED. Minors are persons under eighteen years of age. Age shall be calculated from the first minute of the day on which persons are born to the same minute of the corresponding day completing the period of minority."

The also amended Section 14-10-02 which defines adults provides as follows:

" 'ADULTS' DEFINED. All persons eighteen years of age and over are adults."

It is thus observed that an eighteen-year-old person is now deemed to be an adult, even though age limitations still apply to certain activities such as possessing or purchasing alcoholic beverages or entering into contracts of marriage.

Residence is acquired by an overt act coupled with intent. It thus becomes a question of fact in most instances. In order to vote, a person must not only be a resident, but must satisfy the constitutional and statutory provisions as to length of residence mentioned earlier.

By the adoption of the Twenty-sixth Amendment eighteen-year-old persons were made eligible to vote, provided they meet the residence requirements in the same manner as twenty-one-year-old persons heretofore were required to meet.

An eighteen-year-old person, even though he is a student, may be eligible to vote. The question, however, remains where is his residence. The mere fact that he is a student does not alter the requirements. As a student, he can qualify to vote at the location of the school if he meets the residence requirements and was a resident of the state for one year, in the county for ninety days and in the precinct for thirty days.

Specifically as to students, one of the basic questions which must be answered is the intent of the student. Does he intend to return to his former home as soon as his course of studies is completed? If he intends to return to his home and does not make the place where he is staying while attending school his residence, he, of course, does not satisfy the requirements of law to vote at that place. He would be eligible to vote in the place where his legal residence has been established.

It is therefore our opinion that persons eighteen years of age must meet the same residence requirements as was and is required of persons twenty-one years of age or over.

Because the question of residence is largely a question of fact, each instance must be considered on its own set of facts. The facts required to establish residence requirements are not stronger for students than they are for any other individual, nor are they any weaker, they are all to be treated the same.

We might also state that the nonresident student as defined by statutes for tuition purposes has not been altered or modified as a result of the Twenty-sixth Amendment.

HELGI JOHANNESON

Attorney General