

OPINION
72-72

June 21, 1972 (OPINION)

The Honorable Ben Meier

Secretary of State

RE: Constitution - Ellendale Amendment - Election

This is in response to your letter in which you ask for an opinion whether or not House Concurrent Resolution 3020 (Chapter 622 of the 1971 Session Laws) shall be placed on the primary election ballot on September 5, 1972.

House Concurrent Resolution 3020 (Chapter 622, 1971 Session Laws) provides for the amended version of Section 121 of the North Dakota Constitution to be submitted to the qualified electors of the state at the first statewide election for purposes of approving or rejecting same. Section 121 in its amended form provides as follows:

Section 121. Every person of the age of eighteen or upwards who is a citizen of the United States, and who shall have resided in the state one year, and in the county ninety days, and in the precinct thirty days next preceding any election shall be a qualified elector 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 concurrent resolution in substance provides that the amendment to Section 121 shall be submitted to the qualified electors at the first statewide election that is held following the special election called to consider the proposals of the Constitutional Convention, "provided, however, that this amendment shall be submitted to the electorate if the attorney general shall determine that the Constitutional Convention has proposed an amendment or revision to the Constitution which would allow persons 18 years of age and upward to vote in all elections.

The Constitutional Convention met and proposed a new Constitution which among other things contained a provision that citizens of the United States who have attained the age of 18 years and who have been residents of the state for six months and of the county for ninety days and in the precinct for thirty days preceding an election shall be qualified electors. This provision, along with the other provisions of the Constitution, was rejected by the electorate at the special election held on April 28, 1972.

The quoted portion of House Concurrent Resolution 3020 clearly indicates that the Legislature only required the submission of the amended version of Section 121 of the North Dakota Constitution to the electorate in the event that 18 year old persons were not by law entitled to vote or are not considered to be qualified electors providing they have met other residency requirements.

In this regard, we must take into account that the Congress of the United States by Senate Joint Resolution 7 passed on March 23, 1971, proposed a constitutional amendment to the various states. The constitutional amendment to the United States Constitution is as follows:

"Article 26

Section 1. 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 n account of age.

Section 2. The Congress shall have power to enforce this article by appropriate legislation."

Three-fourths of the states have ratified this constitutional amendment and it is now law with full force and effect in every state. As a result of the constitutional amendment, persons 18 years of age and upward are entitled to vote in all elections providing they meet the residency requirements.

We would further observe that the durational residency provisions of the proposed amendments to Section 121 of the North Dakota Constitution are invalid because they do not now meet the constitutional requirements of the United States Constitution as interpreted by the United States Supreme Court in *Dunn v. Blumstein*, 31 L. Ed. 2d. 274.

We would also like to observe that if the proposed amendment is placed on the ballot and is rejected by the people, it can only create confusion and might give rise to attempted litigation.

In conclusion, it appears to us that placing such measure on the ballot would accomplish nothing except conceivably an expression of the people whether or not they would have individually voted for the 18 year old's right to vote. Any result of such election would be merely academic and might lead to misunderstanding, confusion and expenditure of time and effort in explaining that it really has no legal consequences.

Because the proposed amendment contains provisions which are invalid and because it will serve no real purpose, it is our opinion that you are not required by law to place the question on the ballot and that you are justified in leaving it off.

The legislature, however, if it so desires, may propose a constitutional amendment as to durational residence for voting purposes. As pointed out the current provisions, as well as the proposed provisions, is not in conformance with the Supreme Court ruling.

HELGI JOHANNESON

Attorney General