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STATE OF ILLINOIS
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SPRINGFIELD

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FILE NO. S-490

MARRIAGE AND DIVORCE:
Necessity for Parental Consent
for Eighteen-Year-Old Male

Honorable Don Johnson
State's Attorney
Perry County
Courthouse
Pinckneyville, Illinois 62274

Dear Mr. Johnson:

I have your letter asking my opinion as follows:

"There has been brought to the attention of my office an instance in which a 21 year old female and an 18 year old male wish to be joined in marriage. The sole surviving parent of the 18 year old male has refused to consent to the marriage. Section 3 of an act to revise the law in relation to marriages (Illinois Revised Statutes, Chap. 89, Section 3) provides that the consent of a parent or guardian must be obtained by a male who has achieved the age of 18 years but has not yet attained the age of 21 years. In contrast to this, a female who has attained the age of 18 years may marry without parental consent.

> "In view of the fact that Section 131 of the Probate Act, as amended effective August 24, 1971, provides that persons of the age of 18 shall be considered of legal age for all purposes except that of the Illinois Uniform Gifts to Minors Act, in view of the voting rights to males and females at age 18, in view of Section 2 of Article I of the Constitution of 1970, which provides that no person shall be denied the equal protection of the laws, and of Section 18 of that Article which provides that the equal protection of the law shall not be denied on account of sex, and in view of Section 13 of Article IV of the Constitution of 1970 which prohibits the General Assembly from passing special legislation, I wonder whether your opinion is the same as mine that this provision as applied to the eighteen year old male is fatally defective and unconstitutional."

Public Act No. 77-1229, now codified as Ill. Rev. Stat. 1971, ch. 3, par. 131, provides:

> "Persons of the age of 18 shall be considered of legal age for all purposes, except that of the Illinois Uniform Gifts to Minors Act, and until this age is attained, they shall be considered minors."

House Bill No. 694 of the Seventy-seventh General Assembly would have permitted males to marry at eighteen without parental consent, as females can under sec. 3 of "AN ACT to revise the law in relation to marriages" (Ill. Rev. Stat. 1971, ch. 89, par. 3). This bill was vetoed on August 24, 1971, on the basis that the right to marry

involved social questions far different from those surrounding contractual and voting rights.

The United States Constitution, Amendment XXVI, sec. 1, effective July, 1971, provides:

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

The United States Constitution, Amendment XIV, sec. 1, provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws."

The Illinois Constitution of 1970, Article I, sec. 2, provides:

> "No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws."

The Illinois Constitution of 1970 also provides, Article I, sec. 18:

> "The equal protection of the laws shall not be denied or abridged on account of sex by the State or its units of local government and school districts."

As you are aware, the Equal Rights Amendment to the United States Constitution, which if ratified would be the XXVII Amendment, is now pending with the several

states (S.J.R.-62, H.J.R. Constitutional Amendment No. 13, 77th General Assembly). Ratification of this amendment failed on June 15, 1972, but is held in postponed consideration. However, ratification or failure of ratification does not supply the answer to your question. The constitutional amendment, not yet ratified by enough states to constitute adoption, is a prohibition against denial of equal rights, and not a limitation of the states to act in a manner, constitutional or statutory, which would grant equal rights to the sexes.

The federal Civil Rights Act of 1964 (Pub.L. 88-352, 78 Stat. 241, U.S.C.A. Title 28, sec. 1447; Title 42, secs. 1971, 1975a - 1975c, 2000a to 2000h-6) provides, in part:

> "(a) It shall be an unlawful employment practice for an employer--
>
> "(1) to fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
>
> "(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin." U.S.C.A. sec. 2000e-2

Under the Civil Rights Act, a number of cases have been decided, almost without exception finding a prohibited sex discrimination. Airline stewardesses could not be required to be unmarried (Sprogis v. United Air Lines, 444 F. 2d 1194-1971). A pregnant unwed woman could not be discharged solely because she was unwed (Doe v. Osteopathic Hospital of Wichita, Inc., 333 F. Supp. 1357 (1971). A widow prevailed in her challenge to an employee requirement that women retire at 55 and men at 60, where her husband's death at 59 denied her pension survivors' rights solely because of her husband's sex, Mixson v. Southern Telephone & Telegraph Co., 334 F. Supp. 215, 1971.

In Reed v. Reed, 404 U.S. 71, the Supreme Court unanimously overturned a state statute providing that when persons of equal relationship to a decedent seek to administer his estate, "males must be preferred to females."

The Court found the statute in question "provides that different treatment be accorded to the applicants on the basis of their sex; it thus establishes a classification subject to scrutiny under the Equal Protection Clause."

> "In applying that clause, this Court has consistently recognized that the Fourteenth Amendment does not deny to States the power to treat different classes of persons in different ways. Barbier v. Connolly, 113 U. S. 27 (1885); Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61 (1911); Railway

Express Agency, Inc. v. New York, 336 U. S. 106 (1949); McDonald v. Board of Election Commissioners, 394 U. S. 802 (1968). The Equal Protection Clause of that Amendment does, however, deny to States the power to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute. A classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.' Royster Guano Co. v. Virginia, 153 U. S. 412, 415 (1920). The question presented by this case, then, is whether a difference in the sex of competing applicants for letters of administration bears a rational relationship to a state objective that is sought to be advanced by the operation of §§15-312 and 15-314.

"* * * The [state] court also concluded that where such persons are not of the same sex, the elimination of females from consideration 'is neither an illogical nor arbitrary method devised by the legislature to resolve an issue that would otherwise require a hearing as to the relative merits . . . of the two or more petitioning relatives. . . .' 93 Idaho, at 514, 465 P. 2d, at 638.

"Clearly the objective of reducing the workload on probate courts by eliminating one class of contests is not without some legitimacy. The crucial question, however, is whether §15-314 advances that objective in a manner consistent with the command of the Equal Protection Clause. We hold that it does not. To give a mandatory preference to members of either sex over

> members of the other, merely to accomplish the elimination of hearings on the merits, is to make the very kind of arbitrary legislative choice forbidden by the Equal Protection Clause of the Fourteenth Amendment; and whatever may be said as to the positive values of avoiding intrafamily controversy, the choice in this context may not lawfully be mandated solely on the basis of sex."

The pure question of age as related to sex was answered by a United States Court of Appeals recently in Reed v. Page, 40 L. W. 2631. A seventeen-year-old male challenged the Oklahoma statute providing that a male of sixteen be tried as an adult, rather than a juvenile, but a female be tried as a juvenile until age eighteen. The Court of Appeals said:

> "We have not been presented with a logical constitutional justification for the discrimination inherent in 10 Okl.St.Ann. Sec. 1101 (a). The state, in its brief and oral argument has simply relied upon the unexplained 'demonstrated facts of life'. Because the purpose of the disparity in the age classification between 16-18 year old males and 16-18 year old females has not been demonstrated, we hold that 10 Okl.St. Ann. Sec. 1101 (a) is violative of the Equal Protection Clause."

The same rule obtained in a companion case, Lamb v. Brown, 3 CCH Poverty Law Rep., par. 15,421.

However, age has not been removed for all purposes as an appropriate classification under the federal

and Illinois Constitutions. Some rule of law must govern individual rights and obligations, and generally so long as it is reasonable and uniformly applied it would be constitutionally unobjectionable.

The long-assumed prior maturation of the female, as related to the male, socially and intellectually, has been laid to rest by the constitutional enactments and other similar laws. Correspondingly, were the advantage given to the male and withheld from the female, the constitutional repugnancy would be exactly the same.

It is therefore my conclusion that under the federal Equal Protection Clause, the Illinois equal protection clause, Article I, sec. 2, and Article I, sec. 18, of the Illinois Constitution providing equal protection to the sexes, sec. 3 of "AN ACT to revise the law in relation to marriages" is unconstitutional insofar as it differentiates between the sexes. The discrimination arises out of the provision that one sex need only be eighteen years old to marry without consent and the other must wait till the age of twenty-one to avail himself of this right. The placing of males and females for marriage purposes in different classes, based solely on age differential, does not rest upon any grounds of difference having a fair and substantial relation to the object of the legislation, so

that all persons similarly circumstanced are treated alike. Therefore, the nondiscriminatory age for both would be the lesser, and both male and female may marry without parental consent at age eighteen.

Very truly yours,

ATTORNEY GENERAL

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