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September 6, 1973

FILE NO. S-626

ELECTIONS:
Registration Requirements

Honorable John J. McCarthy, Jr.
State's Attorney
Coles County
P. O. Box 297
Charleston, Illinois 61820

Dear Mr. McCarthy:

I have your recent letter wherein you state:

"I have been requested by the County Clerk and Recorder of Coles County, Illinois to furnish an opinion regarding voter registration.

In this county is located Eastern Illinois University. This University publishes a newspaper known as the 'EASTERN NEWS'. On April 16, 1973 there appeared in that publication an encouragement to students to register and vote in Coles County these same notices indicate the registrant could remain registered in his home county.

A review of the Illinois Revised Statutes 1971, Chapter 46, Section 4-8 indicates in part:

'If the applicant for registration was last registered in another county within this State he shall also sign a certificate authorizing cancellation of the former registration. . . . '

The question asked by the County Clerk and Recorder is whether the signing of the cancellation certificate is a condition precedent to registration and if the individual refuses to sign the cancellation certificate is the registration official acting properly in refusing to register the applicant.

Enclosed is a copy of the notice appearing in the 'EASTERN NEWS' of April 16, 1973.

Your opinion as to the responsibility of the County Clerk and Recorder in this matter will be appreciated."

Section 4 of Article III of the 1970 Illinois Constitution provides as follows:

"The General Assembly by law shall define permanent residence for voting purposes, insure secrecy of voting and the integrity of the election process, and facilitate registration and voting by all qualified persons. Laws governing voter registration and conduct of elections shall be general and uniform."

You have asked for an interpretation of section 4-8 of "The Election Code" (Ill. Rev. Stat. 1971, ch. 46, par. 4-8.) which provides in part:

"A permanent abode is necessary to constitute a residence within the meaning of the preceding section. * * * "

In Opinion No. S-335 which was issued by this office on September 29, 1971 it was pointed out that a permanent abode is necessary to constitute a residence and that one cannot have a residence in two places at the same time.

(Bullman v. Cooper, 362 Ill. 469 and Pope v. Board of Election Commissioners, 370 Ill. 196.) The following language was quoted from Anderson v. Pifer, 315 Ill. 164 at pages 167 and 168:

"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. * * * "

It has been held that the General Assembly has the power to establish registration requirements for voters which constitute reasonable limitations on the right of suffrage, (Clark v. Quick, 377 Ill. 424; Pope v. Board of Election Commissioners, 370 Ill. 196; People ex rel. Rago v. Lipsky, 327 Ill. App. 63.) In Tuthill v. Rendelman, 387 Ill. 321 the court said at page 350:

"A right to vote is not an inalienable right. It is a conditional right, conditioned upon many things, among which are not only the requirement that he be properly registered as a voter, but that he appear at the proper hours for voting and that he vote only in his own precinct, and the like. (Clark v. Quick, 377 Ill. 424.) The general rule in determining whether a statute is mandatory or advisory is as follows: 'Where the terms of a statute are peremptory and exclusive, where no discretion is reposed or where penalties are provided for its violation, the provisions of the act must be regarded as mandatory.' (Clark v. Quick, 377 Ill. 424; Siedschlag v. May, 363 Ill. 538; Allen v. Fuller, 332 Ill. 304; People v. Bushu, 288 Ill. 277; Behrensmeyer v. Kreitz, 135 Ill. 591.) It is clear that no discretion is reposed in the voter by the language of the Permanent Registration Act as to the necessity for his registration in the manner required by the act. It was the evident intention of the General Assembly to put teeth into the Permanent Registration Act and to prevent frauds arising out of illegal or indifferent registration."

Furthermore, it is a general rule that there must be a compliance with statutory provisions relating to transfers of registration. (Gigante v. Board of Elections of City of New York, 311 N.Y.S. 2d 450; Metric Inv., Inc. v. Patterson, 244 A. 2d 311.) A voter may have his registration transferred to correspond to a change of residence provided that the statutory procedure is followed, Roy v. Beveridge, 125 Or. 92, 266 P. 230; State v. Surber, 83 W.Va. 785, 99 S.E. 187.

Based upon the foregoing legal authorities I am of the opinion that if the applicant for registration was last registered in another county of this State then he is required by section 4-8 of "The Election Code" to sign a certificate authorizing cancellation of the former registration. I believe this to be a reasonable requirement to insure the integrity of the election process as required by section 4 of Article III of the 1970 Illinois Constitution. It is, in my opinion, a mandatory requirement which must be followed in order to complete his transfer of registration. Such a construction is necessary in order to insure that the applicant does not vote in two places. In determining whether a statute is mandatory, consideration

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must be given to the entire statute, its nature, its object, and the consequences which would result from construing it one way or the other, Zbinden v. Bond County Community Unit School Dist. No. 2, 2 Ill. 2d 232; People ex rel. Stuckart v. Chicago B. & O. Railroad Co., 290 Ill. 327.

You also asked whether your County Clerk and Recorder is acting properly in refusing to register an applicant who refuses to sign the certificate authorizing cancellation of his former registration. Although it is true that the statute does not expressly say that your County Clerk and Recorder should refuse to register a person who refuses to sign the certificate authorizing cancellation of the former registration, such a result should be implied. Necessary implications and intendments from the language used in a statute may be resorted to in order to ascertain legislative intent. (U.S. v. Jones, 204 F. 2d 745.) A statutory grant of power or right carries with it, by implication, everything necessary to carry out the power or right and make it effectual and complete, Euziere v. Highway Commissioners of Town of Rockville, 346 Ill. 131.

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In conclusion, I am of the opinion that your County Clerk and Recorder should refuse to register an applicant who is registered in another county of this State if he refuses to sign a certificate authorizing cancellation of his former registration as required by section 4-8 of "The Election Code." Such a result is necessary in order to make the statute effectual and complete.

Your question refers specifically to university students. I would call your attention to the following language in my opinion No. S-335 (1971 Op. Atty. Gen. 96):

"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."

Very truly yours,

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