

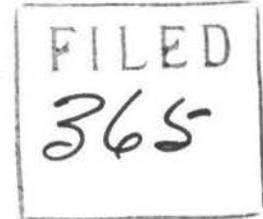
ELECTIONS:
PRESIDENTIAL ELECTORS:

An individual eighteen years of age is not disqualified from being chosen as a presidential elector for Missouri.

OPINION NO. 365

July 8, 1971

Honorable James C. Kirkpatrick
Secretary of State
State Capitol Building
Jefferson City, Missouri 65101



Dear Mr. Kirkpatrick:

This official opinion is issued in response to your request of June 22, 1971, in which you ask whether a person eighteen years of age is eligible to be selected as a presidential elector for Missouri.

Presidential electors are provided for by Article II, Section 1 of the Constitution of the United States, and the constitutional provision is implemented by Title 3 U.S.C., Sections 1 through 6. Neither the Federal Constitution nor the federal statutes specify any qualifications as to age or otherwise. Article II, Section 1 of the United States Constitution provides, in fact, that:

"Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, . . ."

Public Law 91-285 (1970), 42 U.S.C. 1973bb, provides for voting by persons eighteen years of age and older but says nothing about the eligibility of any persons to serve as electors.

Presidential electors are state officers, and not federal officers, even though they perform a federal function. *Walker v. United States*, 93 F.2d 383 (8th Cir. 1937); cert. denied 303 U.S. 644. State regulation of the manner of choosing delegates for national conventions and of voting for electors have regularly been upheld. See *Irish v. Democratic-Farmer-Labor Party of Minnesota*, 399 F.2d 119 (8th Cir. 1968). A state is obliged to provide a reasonable method by which minority parties may nominate candidates for presidential electors (*Williams v. Rhodes*, 393 U.S. 23, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968)), but there is no federal case law as to who may be an elector.

We perceive no federal obstacle to the state's providing by law for the qualifications of presidential electors, subject possibly to a requirement that the qualifications be reasonable. In

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the early case of *In re George H. Corliss*, 11 R.I. 638 (1878), the authority of a state to provide that electors could not hold other office was upheld.

Article VII, Section 8 of the Constitution of Missouri provides as follows:

"No person shall be elected or appointed to any civil or military office in this state who is not a citizen of the United States, and who shall not have resided in this state one year next preceding his election or appointment, . . ."

The only other state constitutional provision as to qualifications for officers is found in Article IV, Section 17. This provision applies to elected state officers in named offices and to appointed officers, but does not purport to cover presidential electors. It has no language which could be construed as imposing an age requirement for electors.

Nor do we find any statutory provision about the qualifications of electors. Section 120.840, RSMo 1969, provides for the nomination of electors by conventions of political parties, and parts of Chapters 111 and 128, RSMo, deal with the manner of choosing electors. These sections contain no restriction on the right of the parties to nominate, or of the voters to choose, any person they care to as a presidential elector.

Section 475.010(5), RSMo 1969, defines a "minor" as "any person who is under the age of twenty-one years." Section 1.020(14), RSMo 1969, defines "under legal disability" as including "persons under the age of minority." The statutes enumerate various disabilities such as, for example, in the making of contracts (Section 475.010, RSMo 1969), or the purchase of intoxicating liquors (Section 311.325, RSMo 1969), but we find no provision imposing a general disability on "minors" as defined in the statutes.

Article VII, Section 2 of the Missouri Constitution establishes the minimum age of twenty-one for voters. This provision has been superseded as to election of presidential electors, and senators and congressmen by Public Law 91-285 (1970), 42 U.S.C. 1973bb, which was upheld as to those elections (but not as to other elections), in *Arizona v. United States*, 400 U.S. 112, 91 S.Ct. 260, 27 L.Ed. 2d 272 (1970). The provision of Article VII, Section 2 of the Missouri Constitution relating to age has been superseded as to other elections by Amendment XXVI to the United States Constitution, Section 1 of which provides as follows:

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"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 on account of age."

There is no requirement of federal or state law, however, that a person be a qualified voter in order to be eligible to serve as elector.

In State ex rel. Crow v. Hostetter, 137 Mo. 636, 39 S.W. 270 (1897), the Supreme Court of Missouri held that a women was qualified to hold office when there was no specific provision disabling her from so doing. This decision was rendered at a time when women did not have the right to vote and therefore stands for the proposition that a condition that an officeholder be a qualified voter will not be implied. The reasoning would apply to presidential electors.

We find no express provision as to the age of presidential electors, and no basis for implying a condition that an elector be twenty-one years of age.

CONCLUSION

It is the opinion of this office that an individual eighteen years of age is not disqualified from being chosen as a presidential elector for Missouri.

The foregoing opinion, which I hereby approve, was prepared by my Special Assistant, Charles B. Blackmar.

Yours very truly,



JOHN C. DANFORTH
Attorney General