

ELECTIONS:

No person who establishes residence in Missouri 28 days or less prior to a primary or general election can register or vote in places where registration is required or vote in places where registration is not required at such ensuing primary or general election.

SUPPLEMENTAL OPINION NO. 123A

July 19, 1972

Mr. John T. Wiley, Chairman
Board of Election Commissioners
City of St. Louis
208 South 12th Boulevard
St. Louis, Missouri 63102



Dear Mr. Wiley:

This opinion supplements Opinion No. 123 rendered in answer to your request for an opinion as to the effect of recent decisions of the Supreme Court of the United States relating to voter residency requirements. In such opinion this office held that the requirement of one year's residence in the state as a condition to voting established by Section 2 of Article VIII of the Constitution of Missouri and Section 111.021, RSMo, is unconstitutional and void under the ruling of the Supreme Court of the United States in the case of Dunn v. Blumstein. In such opinion we also held the durational requirement of 60 days residence in a county, city or town as a condition to voting, as provided in such constitutional and statutory provisions, is not applicable to primaries but is applicable only to general elections.

The Supreme Court of Missouri on July 12, 1972, in the case of Totton v. Murdock, No. 57976 held that the provision in Section 2 of Article VIII of the Missouri Constitution as to age is applicable to primary elections as well as general elections except as modified by the 26th Amendment to the Constitution of the United States. Specifically, the court held that persons who are not 18 years old on or before the day after a primary are not entitled to register for or vote in such primary. (Attorney General's Opinion No. 132 rendered to Kohn under date of April 24, 1972, is hereby withdrawn). In view of the fact that the Supreme Court held that requirements relating to age are applicable to voters at primary elections, it appears that the residential requirement applicable to voters also are applicable to primary elections as well as general elections. Therefore, it becomes necessary to determine whether or not the 60 days residential requirement in Section 2 of Article VIII of the Constitution of Missouri and Section 111.021, RSMo, is invalid and void under the holding of Dunn v. Blumstein, supra.

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It is the opinion of this office that the residential requirement of 60 days in the city, county, or town as a condition to voting as provided for in Section 2 of Article VIII of the Constitution and Section 111.021, RSMo, is invalid, void and of no effect under the holding of the Supreme Court in the Dunn case. As pointed out in Opinion No. 123, the Supreme Court of the United States held invalid and void such residential requirements as a qualification for voting. The court in that case did uphold as a valid enactment the closing of the registration books throughout the State of Tennessee 30 days prior to an election. It is our view, therefore, that the only valid provisions in Missouri, at present, applicable to residents of this state are those statutes providing for registration. Therefore, anyone establishing residence in this state after the close of the registration period is not entitled to participate in the ensuing election. While there are slight variations as to the closing date of registration in the various cities and counties of this state, no statute provides for a closing date for registration more than 28 days before the election (e.g., Section 114.120, RSMo, applicable to county option registration). In view of the fact that it would be discriminatory to hold that persons establishing residence in areas of this state where registration is required cannot register or vote if they establish such residence within a statutory period preceding an election but that persons establishing residence in this state in areas in which registration is not required during such period can vote, it is our view that no person who establishes residence in the state within 28 days prior to an election is entitled to vote at the ensuing election.

It is our view that the maximum period during which the registration books are closed is the applicable standard to determine whether a person has established a residence in this state which entitles him to vote.

We note that Section 118.240, RSMo Supp. 1971, applicable to elections in cities of over 600,000 provides that registration for municipal elections shall close at 5 p.m. on the forty-fifth day prior to the April election. This opinion does not purport to rule on the validity of such provisions.

CONCLUSION

It is, therefore, the opinion of this office that:

1. The requirement of one year's residence in the state as a condition to voting in a primary or general election, as provided for in Section 2 of Article VIII of the Missouri Constitution and Section 111.021, RSMo 1969, is unconstitutional and void.

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2. The durational residential requirement of 60 days residence in a county, city, or town as a condition to voting in primaries or general elections as provided in Section 2 of Article VIII of the Constitution of Missouri and Section 111.021, RSMo, is unconstitutional and void.

3. Any individual otherwise qualified who establishes residence in this state more than 28 days prior to the next ensuing primary or general election in an area in this state in which registration is required is authorized to register and vote at the ensuing primary or general election.

4. Any individual otherwise qualified who establishes residence in this state more than 28 days prior to the next ensuing primary or general election in an area in this state in which registration is not required is authorized to vote at the ensuing primary or general election.

5. An individual establishing residence in this state 28 days or less before a primary or general election cannot register for or vote at such primary or general election.

As pointed out in Opinion No. 123, a suit instituted by the Attorney General is now pending in federal court requesting a ruling on the 60 day constitutional and statutory requirement. This opinion will remain in effect unless it is changed, modified or otherwise affected by a court ruling on such provisions.

Yours very truly,



JOHN C. DANFORTH
Attorney General