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January 14, 1972

DEPARTMENT OF LAW OPINION NO. 72-1 (R-18)

REQUESTED BY: THE HONORABLE RICHARD J. RILEY
Cochise County Attorney

QUESTION: May an unemancipated minor attending college in Arizona, whose parents are nonresidents of the state, register to vote in Arizona when he reaches the age of 18?

ANSWER: Yes.

It has been our advice that they can, in light of the 26th Amendment as it relates to voting rights. We can find no differential between emancipated and unemancipated. This does not affect other questions relating to emancipation.

Section 1 of the 26th Amendment to the United States Constitution reads as follows:

"The right of citizens of the United States, who are eighteen years of age or over, to vote shall not be denied or abridged by the United States or by any State on account of age." (Emphasis added.)

The California Supreme Court in the very recent case of Jolicoeur v. Mihaly, 96 Cal.Rptr. 697, 488 P.2d 1 (1971), held:

". . . We conclude that for state officials to treat minor citizens differently from adults for any purpose related to voting would violate the Twenty-Sixth Amendment to the United States Constitution. . . ." 488 P.2d at 2.

The court further held that the voting rights of minors:

". . . shall not be curtailed on the basis of hoary fictions that these men and women are children tied to residential apron strings. Respondents' refusal to treat petitioners as adults for voting purposes violates the letter and spirit of the Twenty-Sixth Amendment." 488 P.2d at 7.

The court further noted and laid emphasis upon the term "or abridged", defining "abridge" to mean "diminish, curtail, deprive, cut off, reduce". 488 P.2d at 4.

The court found that requiring minors to vote at their parents' place of residence would place an undue burden upon the voting rights of young people. The court concluded in holding that a minor must be subject to the same requirements in proving the location of his domicile as is any other voter, stating as follows:

". . . In this case the strong likelihood that substantial numbers of voting minors living apart from their parents are emancipated for residential purposes, coupled with the necessity that minors given the vote be treated as emancipated for all purposes related to voting, persuades us that a minor 18 years of age or older must be treated as an adult for voting purposes, and that the location of his domicile may not be questioned on account of age or occupational status.

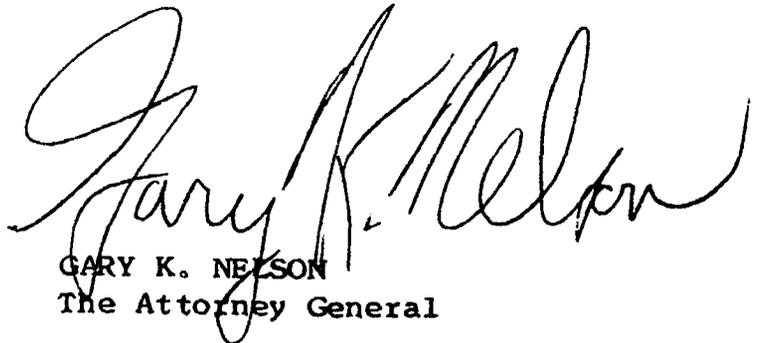
"We hold today that both the Twenty-Sixth Amendment to the United States Constitution and California law require respondent registrars to treat all citizens 18 years of age or older alike for all purposes related to voting. We do not imply that registrars may not question a citizen of any age as to his true domicile. However,

the middleaged person who obtains a job and moves to San Francisco from San Diego, and the youth who moves from his family home in Grass Valley to Turlock to attend college must be treated equally. . . . We hold . . . that registrars may not specially question the validity of an affiant's claim of domicile on account of his age or occupational status." 488 P.2d at 11-12.

The Chief Justice of the California Supreme Court in his concurring opinion pointed out that consideration of California law was unnecessary inasmuch as the holding was required by the 26th Amendment to the Constitution. This office concurs in the reasoning of the California case above referred to.

In the recent case of Kennedy v. Meskill, Civil No. 14,548, United States District Court for the District of Connecticut, in a Memorandum and Order bearing date of September 13, 1971, the court held that the state, county or city officials of Hartford could not ask the plaintiffs (18 year olds) any questions not asked of all other applicants for registration, nor could the procedures be different than those used for all other applicants. It further enjoined any official from asking these questions not asked of all applicants. This opinion is quoted to emphasize the near universality of the holding in the California case when it gets to litigation.

Respectfully submitted,



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The Attorney General