

FORMAL OPINION

August 7, 1974

HONORABLE J. EDWARD CRABIEL  
Secretary of State  
State House  
Trenton, New Jersey 08625

FORMAL OPINION NO. 3-1974

Dear Secretary Crabiel:

You have asked for an opinion as to whether the 30 day voter durational residency requirement set forth in Laws of 1974, c. 30, §6, is violative of Art. 2, para. 3(a) of the 1947 New Jersey Constitution which provides that an individual must be a resident of the county where he intends to vote for 40 days preceding an election.\*

A review of a number of authoritative decisions of the Supreme Court of the United States suggests that substantial doubt has now been cast on the constitutionality of the 40 day voter durational residency requirement of our State Constitution. A serious question has now arisen under the Equal Protection Clause of the United States Constitution as a result of the newly enacted 29 day period for registration preceding an election. In *Dunn v. Blumstein*, 405 U.S. 330, 31 L. Ed. 2d 274, 92 S. Ct. 995 (1972), the Supreme Court of the United States struck down the durational residency requirement of the State of Tennessee, which required the voter to be a resident of the state for one year and of the county for 3 months. Significantly, Tennessee permitted registration up to 30 days before an election. In declaring the Tennessee durational residency requirements to be unconstitutional, the Court did not fix a specific residency period but left some discretion to the states to fix the period within reasonable limits. The Court said:

“Fixing the constitutionally acceptable period is surely a matter of degree. It is sufficient to note here that 30 days appears to be an ample period of time for the State to complete whatever administrative tasks are necessary to prevent fraud—and a year, or three months too much.”

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“As the court below concluded, the cut-off point for registration 30 days before an election ‘reflects the judgment of the Tennessee legislature that 30 days is an adequate period in which Tennessee’s election officials can effect whatever measures may be necessary, in each particular case confronting them, to insure purity of the ballot and prevent dual registration and dual voting’ . . . .”

The Supreme Court has more recently upheld a statutory closing of voter registration 50 days before election, *Burns v. Fortson*, 410 U.S. 686, 93 S.Ct. 1209, 35 L.Ed. 2d 633 (1973), and a 50 day durational residency requirement which was tied to a closing of registration 50 days before election. *Marston v. Lewis*, 410 U.S. 679, 93 S.Ct. 1211, 35 L.Ed. 2d 627 (1973).

The essential rationale of the Supreme Court’s opinions in *Dunn* and *Marston* is that a residency requirement of 40 or 50 days may be sustained if the Legislature determines such a period of time to be necessary for the preparation of adequate voter lists. Enactment of a law establishing a shorter period for the preparation of

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voter lists, such as the 29 day period provided by this law, constitutes a legislative judgment that the longer period is not necessary for that purpose. Although the Supreme Court of the United States has not held that a state's durational residency requirement must be identical with the period between the close of registration and election day, the Court in *Dunn* and *Marston* emphasized that a legislative act prescribing a specific period of time to be necessary to achieve the State's legitimate goal of preparing adequate voter lists would also probably tend to indicate that no longer period of time would be necessary as a durational residency requirement. Therefore, the enactment of a 29 day period for registration preceding an election substantially undermines the constitutional basis presently sustaining a longer 40 day residency period.

For these reasons, it is our opinion that the establishment of a 29 day period by the Legislature for the preparation of adequate voter lists has created a substantial likelihood that the 40 day durational residency provision of the State Constitution may be violative of the Equal Protection Clause of the United States Constitution. You are therefore advised that in accordance with Laws of 1974, c. 30, §6, N.J.S.A. 19:31-5, all county boards of election may be informed that a registrant shall be entitled to vote at any election held subsequent to such registration if he or she is a resident of the State and county for at least 30 days at the time of the holding of such election.

Sincerely yours,

WILLIAM F. HYLAND  
*Attorney General*

By: THEODORE A. WINARD  
*Assistant Attorney General*

\* Art. 2, para. 3(a)

"Every citizen of the United States, of the age of 21 years, who shall have been a resident of this State 6 months and of the county in which he claims his vote 40 days, next before the election, shall be entitled to vote for all officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to a vote of the people;"

A concurrent resolution was introduced in the General Assembly proposing to amend Art. 2, para. 3 of the Constitution of New Jersey, to provide for a durational residency requirement of only 30 days. This resolution passed in the General Assembly on April 30, 1973 and in the Senate on November 29, 1973. The proposed amendment to the State Constitution will appear as a referendum on the ballot in the November 1974 general election.