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TO: President
Second Constitutional Convention

DATE: 7/15/85

FR: Attorney General

RE: How courts evaluate whether durational residency requirements for voting and office holding are too lengthy
Legal Opinion No. 25

You have asked for an opinion indicating how courts evaluate whether durational residency requirements for voting or office holding are too lengthy.

VOTING

In Dunn v. Blumstein, 405 U.S. 330, 31 L.Ed. 2d 274, 92 S.Ct. 994 (1972), the United States Supreme Court held that the proper yardstick by which to measure the validity under the Federal Constitution of durational residency requirements imposed by the states on voting is the "compelling state interest" test. Under this test, the state must justify any restriction upon the fundamental right to vote by a showing that it serves some compelling state interest. Interests that have been advanced in support of statutes establishing durational residency requirements are as follows: (1) the statutes insure the "purity of the ballot box" by preventing non-residents from fraudulently voting, and they eliminate the threat of colonization, that is, the possibility of great masses of outsiders suddenly descending upon a state or one of its subdivisions solely for the purpose of influencing a particular election, and then just as suddenly returning after the election; (2) the statutes insure that voters will be knowledgeable, informed, and interested, and that they will exercise their right to vote intelligently; and that the statutes are administratively necessary to insure that elections will be carried out in an orderly fashion.

The United States Court has held that the imposition of durational residency requirements on the right to vote was ineffective to achieve the desirable goal of maintaining the "purity of the

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ballot box" by preventing fraud in elections 405 U.S. at 345. Likewise, the United States Supreme Court has held that durational residency requirements for voting may not be justified on the ground that they insure knowledgeable voters or the intelligent casting of votes, 405 U.S. at 354-359.

However, a durational residency requirement for voting may be imposed to the extent necessary to insure the orderliness of the election process. In Burg v. Canniffe, 315 F.Supp. 380 (D.C. Mass. 1970), aff'd 405 U.S. 1034, 31 L.Ed. 2d 575, 92 S.Ct. 1303, the court said that considerations of an administrative nature may require a time period to allow for the paperwork involved in registering new voters and for establishing a time for closing voting lists prior to any given election; time is also required to allow voting officials to determine the number of registered voters and the number of ballots that must be provided, and to enter into a contract for the requisite number of ballots. See also, Smith v. Climer, 431 F.Supp. 123 (1972 D.C. Ark) In Dunn, the court said "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 405 U.S. at 348.

Thus, a durational residency requirement can be imposed on voting to the extent that such a requirement can be justified by the administrative exigencies of registering people to vote.

OFFICEHOLDING

While the Supreme Court of the United States has not yet ruled directly on the validity of durational residency requirements for candidacy or public office, numerous state courts and Federal district and appellate courts have been squarely faced with this question. In some of these cases, it has been argued that durational residency requirements for candidates and public officers are violative of equal protection, in that they infringe upon the exercise of fundamental constitutional rights, such as the right to vote, to travel interstate freely, to be a candidate for public office or to associate freely with others and express oneself as guaranteed by the First Amendment to the United States Constitution.

The type of public office involved and the length of the required residency has frequently been a critical factor in the courts' determination.

In Chimento v. Stark, 353 F.Supp. 1211 (D.C. N.H. 1973), aff'd. 414 U.S. 802, 38 L.Ed. 2d 39, 94 S.Ct. 125, the imposition of a residency requirement of exactly seven years upon the right to run for governor was held permissible under the Federal Constitution.

In Bay Area Women's Coalition v San Francisco, 78 Cal. App. 3d 961, 144 Cal. Rptr. 591 (1978), a provision of a city charter which mandated as a pre-requisite for eligibility for appointment to a board or commission that an individual must have been a city resident for a period of at least five years was held to be violative of the equal protection clause of the Fourteenth Amendment. A five year requirement for city offices was also invalidated in Lawrence v. Cleveland, 91 Cal. Rptr. 863 (1970 Cal. App.); Teilenga v. Nelson, 4 Cal. 3d 716, 94 Cal. Rptr. 602, 484 P.2d 578 (1971); Bird v. Colorado Springs, 507 P.2d 1099 (1973 Colo.); McKinney v. Kaminsky, 340 F.Supp. 289 (D.C. Ala. 1972); Wellford v. Battaglia, 485 F.2d 1151 (C.A. 3 Del. 1973); Alexander v. Kamma, 363 F.Supp. 324 (D.C. Mich. 1973).

A durational residency requirement of exactly four years imposed upon candidates for municipal office failed to withstand equal protection challenges in Martinez v. Newton, 8 Cal. 3d 756, Cal. Rptr. 105, 505 P.2d 529 and Bill v. Carter, 455 F.Supp. 172 (D.C. Md. 1978).

In the following cases, the impositions of a residency requirement of exactly three years upon the right to run for state-level office were held permissible under the Federal Constitution: Gilbert v. State, 526 P.2d 1131 (Alaska 1974); Walker v. Yucht, 352 F.Supp. 85 (D.C. Del. 1972); Hayes v. Gill, 473 P.2d 872 (1970) app. dism'd 401 U.S. 968, 28 L.Ed. 2d 319, 91 S.Ct. 1200.

In DeHond v. Myquist, 65 Misc.2d 526, 318 N.Y.S.2d 650 (1971), the imposition of a residency requirement of exactly three years for municipal office was held not to violate equal protection; whereas the courts in Camera v. Mellon, 484 P.2d 577 (1971); Cowan v. Aspen, 509 P.2d 1269 (Colo. 1973); Bolanski v. Rauch, 330 F.Supp. 724 (D.C. Mich. 1971); Mogk v. Detroit, 335 F.Supp. 698 (D.C. Mich. 1971).

Two year durational residency requirements imposed upon candidates for city level office were held, in the following cases, to be unconstitutional and void, Lentini v. Kenner, 479 F.Supp. 966 (La. E.D. 1979); Wise v. Lentini, 374 So.2d 1286 (1979 La.App); Castner v. Clerk of Gorsse Pointe Park, 272 N.W.2d 693 (1978) ind.

In the following cases, the imposition of a residency requirement of exactly one year upon the right to run for statewide office was held not violative of provisions of the Federal Constitution, Russell v. Hathoway, 423 F.Supp. 833 (D.C. Tex. 1976); Brewster v. Johnson, 541 S.W.2d 306; Ammond v. Keating, 150 N.J. Super 5, 374 A.2d 498.

In the following cases, the imposition of a residency requirement of exactly one year upon the right to run for municipal office was held permissible under the Federal Constitution, Daves v. Longwood, 423 F.Supp. 502 (D.C. Fla.); Joseph v. Birmingham, 510 F.Supp. 1319 (1981 E.D. Mich.); Castner v. Homel, 598 P.2d 953 (1979 Alaska); Johnson v. Hamilton, 541 P.2d 881; Akron v. Bell, 660 F.2d 166 (1981); C.A. 6 Ohio.

In each of these cases, the interests vindicated by the residency requirement are balanced against the interests of persons who wish to run for office. The nature of the office determines the weight of the government's interests in the residency requirement is accorded; whereas, the length of the period of required residency determines the burden on the would-be candidates' right to run for office which must be justified.

The foregoing cases will give you an indication as to how the courts have balanced these interests.

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