

## Opinion No. 71-89

July 19, 1971

**BY:** OPINION OF DAVID L. NORVELL, Attorney General

**TO:** Mr. Clay Buchanan Director New Mexico Legislative Council 334 State Capitol  
Santa Fe, New Mexico 87501

### QUESTIONS

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Does the Age of Majority Act (Laws 1971, Ch. 213) violate either the state or federal constitution?

#### CONCLUSION

No.

### OPINION

#### {\*129} ANALYSIS

The Age of Majority Act (Laws 1971, Ch. 213), subject to certain exceptions, provides in essence that the age of majority is eighteen rather than twenty-one.

This law clearly does not violate the federal constitution. In fact, the word twenty-one appears in only one section of the United States Constitution. Section 2 of the Fourteenth Amendment provides that a state's representation of the U.S. House of Representatives is to be reduced proportionately for that state if persons **who are twenty-one years** of age are not granted the franchise.

Some people may assume that the United States Constitution provides that the elective franchise can only be exercised by those persons twenty-one years of age or over. It does not.

Article I, Section 2, U.S. Constitution provides:

"The House of Representatives shall be composed of members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature."

The Seventeenth Amendment to the United States Constitution provides:

"The electors in each state [for the U.S. Senate] shall have the qualifications requisite for electors of the most numerous branch of the state legislatures."

This fact is one reason why the United States Supreme Court upheld the provision in the 1970 Voting Rights Act Amendment granting to persons eighteen years old and older the right to vote for federal elective officials. **Oregon v. Mitchell**, U.S., 91 S. Ct. 260, 27 L. Ed. 2d 272 (1970).

Nor does Laws 1971, Chapter 213 violate any provision of the State Constitution. The word "twenty-one" appears in only two places in that document. The first is Article VII, Section 1, which sets forth the qualifications for voters -- one of which is that they be "over the age of twenty-one years." Accordingly, in Attorney General Opinion 71-4 we held that the franchise for state election officials could not be granted to those under twenty-one unless the State or United States Constitution was amended. Hence Laws 1971, Chapter 213 specifically provides that it does "not apply to or change any age requirement for exercising the elective franchise." However, in view of the adoption of the 26th Amendment to the **United States Constitution** the minimum age for voters in **all** elections is now eighteen.

The second place where the word twenty-one appears is in Article IV, Section 3 of the New Mexico Constitution which requires, and will continue to require even if the proposed constitutional amendment is adopted, that persons elected to the New Mexico House of Representatives must be "not less than twenty-one years of age at the time of their election."

There is absolutely no constitutional infirmity in Laws 1971, Chapter 213.