

## Opinion No. 71-85

July 14, 1971

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

**TO:** The Honorable Betty Fiorina Secretary of State State Capitol Santa Fe, N.M. 87501

### QUESTIONS

#### QUESTIONS

Can a legislatively proposed constitutional amendment ever be deleted from the ballot?

#### CONCLUSION

Yes, in the unique situation where the proposed amendment has become moot by virtue of an amendment to the United States Constitution.

### OPINION

#### {\*123} ANALYSIS

While the question posed above is the real inquiry in your opinion request, you also ask: "Can the Secretary of State make the determination that a question is moot and remove it from the ballot?" The answer to that is No.

Whether a proposition has become purely academic, i.e., moot, is a legal matter on which the Attorney General, as legal advisor to state officials, must rule. That is what I recently did in a letter to you which I now, at your request, confirm in this formal opinion.

When Proposed Constitutional Amendment No. 1 was passed by the Legislature in the recent session it was a very relevant action. The United States Supreme Court had ruled in **Oregon v. Mitchell** (1970) that those persons eighteen years of age and over could vote in **federal** elections. However, it expressly held that the attempt by Congress to **legislate** voting rights for the 18-20 year olds in **state and local elections** was unconstitutional. Accordingly, Congress then enacted a proposed amendment to the **United States Constitution** granting the elective franchise to this age group in state and local elections.

On June 30, 1971, the Ohio Legislature ratified the 26th Amendment, thereby becoming the 38th state to do so since Congress approved the measure on March 23, 1971. The 26th Amendment to the Constitution of the United States effectively amends Article VII, Section 1 of the New Mexico Constitution by changing the minimum voting age from 21 years to 18 years in **all** elections. The effective date of the Amendment was June 30, 1971. See **Ex parte Dillon**, D.C. Cal., 262 F. 563, aff'd 256 U.S. 368.

While Proposed Constitutional Amendment No. 1 had very real import at the time of its passage, due to the subsequent events above mentioned, the Law of the Land is now such that a vote on C.A. # 1 would be a completely useless act. "The law neither does nor requires idle acts." **In re Bratcher's Estate**, N.D. 34 N.W.2d 825. Or, as the Michigan court phrased it, "The law does not require the doing of a useless thing." **Friedman v. Winshall**, 73 N.W.2d 248; **B-X Corp. v. Jeter**, Ga., 78 S.E.2d 790; **State ex rel. Schoblom v. Anacortes Veneer, Inc.**, Wash. 255 P.2d 379; **Williams v. Barbaretta**, Pa., 59 A.2d 161.

Deletion of C.A. # 1 will save some measurable public money in election expenses. Further, it would make the State look rather foolish to have the **now** constitutionally eligible 18-20 year {\*124} old voters voting on whether they should have the right to vote.

It is our considered judgment that you can, and should. delete Proposed Constitutional Amendment No. 1 from the ballot, but you are not required to do so.