

## Opinion No. 71-86

July 15, 1971

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

**TO:** Honorable Betty Fiorina Secretary of State State of New Mexico Executive  
Legislative Building Santa Fe, N.M. 87501

### QUESTIONS

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Chapter 322, Laws 1971, (the "Federal Voting Rights Compliance Act") states that application for voting in "federal elections" shall be made "at least thirty days prior to the date of a federal election." [See § 4(A)]:

(A) When should the application forms be made available for those qualifying under the "Federal Voting Rights Compliance Act"?

(B) Does the application required under the Act constitute "registration" under the New Mexico law?

#### ANSWER

(A) Any reasonable time period in advance of the thirty [30] day limitation of Section 202.

(B) Yes, see analysis.

### OPINION

#### {\*124} ANALYSIS

The United States Supreme Court, in **Oregon v. Mitchell**, 400 U.S. 112, upheld the Voting Rights Act Amendments of 1970. In this decision, the Supreme Court upheld the constitutionality of Section 202 (42 U.S.C.A. 1973 aa-1) which eliminates durational residency requirements as a precondition for voting for presidential electors and prescribes standards for absentee registration and absentee voting in such presidential elections.

Whether the statute applies to presidential primaries and to such processes as selection of national convention delegates or merely sets forth minimum standards concerning registration and voting procedures is the question at issue here.

(A) New Mexico, in attempting to meet the standards set forth in **Oregon** and Section 202 has enacted a "Federal Voting Rights Compliance Act", Chapter 322, Laws of 1971. Section 3 of this law allows any new resident, former resident or "any voter under twenty-one" to vote for residential candidates in a presidential election". Section 2(H) defines "presidential election" as "any primary election or general election held for the purpose of voting for electors for president and vice president." Thus, it is quite clear that our legislature intended the Act to be applicable in both presidential primaries and general elections, thereby superseding the minimal federal standards prescribed in the federal statute.

Whether the New Mexico State Legislature can set such standards for both the presidential primary and the general election requires the determination whether Article VII, Section 1, N.M. Const. has been superseded by the federal legislation. It is our opinion that a reasonable interpretation of Section 202 and the Opinion in **Oregon v. Mitchell, supra**, lead to such a conclusion.

Section 202(b) and (c) state as follows:

"(b) . . . Congress declares that in order to secure and protect the above-stated rights of citizens under {\*125} the Constitution to enable citizens to better obtain the enjoyment of such rights, and to enforce the guarantees of the fourteenth amendment, it is necessary (1) to completely abolish the durational residency requirement as a precondition to voting for President and Vice-President, and (2) to establish nationwide, uniform standards relative to absentee registration and absentee balloting in presidential elections."

"(c) No citizen of the United States who is otherwise qualified to vote in any election for President and Vice-President shall be denied the right to vote for electors for President and Vice-President, or for President and Vice-President, in such election because of the failure of such citizen to comply with any durational residency requirement of such State or political subdivision; nor shall any citizen of the United States be denied the right to vote for electors for President and Vice-President, or President and Vice-President, in such election because of the failure of such citizen to be physically present in such State or political subdivision at the time of such election, if such citizen shall have complied with the requirements prescribed by the law of such State or political subdivision providing for the casting of absentee ballots in such election."

In Opinion of the Attorney General No. 71-4, dated January 22, 1971, we stated that the presidential primary election is "an integral part of the procedure of choice," and is therefore a "presidential" election under Section 302 of the Federal Act. Cf. Sections 3-8-9 through 3-8-22 Sections 3-8-33 through 3-8-43, N.M.S.A., 1953 Comp.

We are now of the opinion that this reasoning should be extended into the area of residential requirements for presidential primary elections, thereby resulting in the determination that the requirements of Section 202 do apply in presidential primary elections. Thus, Article VII, Section 1 of the State Constitution is no longer a bar to

application of the 1971 New Mexico Legislature's enactment of Chapter 322, this provision as pertaining to residency requirements in presidential elections have been superseded by federal law.

The next presidential primary -- the election for which application forms are necessary -- will be June 6, 1972. It is our opinion that application forms must be available to voters who will qualify under the "Federal Voting Rights Compliance Act" any reasonable time period in advance of the thirty [30] day limitation in Section 202.

(B) An application executed by an individual qualified to vote under the "Federal Voting Rights Compliance Act" is valid only for the "presidential election" in which the presidential ballot is to be cast. Section 5(b). For example, if an individual arriving in New Mexico November 15, 1971, applies, he will qualify under the Act to vote in the June 6, 1972 presidential primary election. However, he must make a new application under the Act in order to vote for president in the general election in November, 1972.

Thus, as "registration" is normally defined in the Election Code, an "application" under the Federal Voting Rights Compliance Act is not registration. See Section 3-4-1, **et seq.** N.M.S.A., 1953 Comp. However, as stated in Section 5 (b) "acceptance of an application" under the provisions of the Act "constitutes registration." Under this provision no other form of registration is necessary to enable a qualified person to vote for presidential candidates in a primary or general election under the Federal Voting Rights Compliance Act; and we must therefore conclude that for purposes of the Act, acceptance of the application constitutes registration.

By: Leila Andrews

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