1972 S.C. Op. Atty. Gen. 116 (S.C.A.G.), 1972 S.C. Op. Atty. Gen. No. 3301, 1972 WL 20442

Office of the Attorney General

State of South Carolina
Opinion No. 3301
April 18, 1972

***1 Re: Durational Residency Requirements for Registering and Voting—effect of Dunn, et al v. Blumstein**

The Honorable James B. Ellisor
Executive Director
State Election Commission
P. O. Box 5987
Columbia, South Carolina ??

Dear Mr. Ellisor:
You have requested the opinion of this office relative to the validity of this State's durational residency requirements for registering and voting in light of the decision of the United States Supreme Court in the case of Dunn, et al v. Blumstein, decided March 21, 1972. South Carolina's requirements are that a citizen, as a prerequisite to registering and thereafter voting, must reside six months in the State, three months in the county and thirty days in the precinct within which he will offer to vote. Article II, Section 4, South Carolina Constitution.

Dunn v. Blumstein held that Tennessee's one-year State and three-month county durational residency requirements were invalid under the Equal Protection Clause of the Fourteenth Amendment. The Court pointed out that these types of restrictions penalize or deny the individual rights of travel and voting insofar as a particular class of citizens are concerned (travelers); and it went on to hold that such were not necessary to further or promote a compelling state interest.

Based upon Dunn, and taking into account the action of the Court on April 4, 1972, in summarily affirming or reversing orders of nine lower Federal Courts dealing with state durational residency requirements (see 40 L.W. 3479), this office feels that it is clear that South Carolina's State and county durational residency requirements cannot pass constitutional muster and should not be enforced. See Amos v. Hadnot, 320 F. Supp. 107 (DCM Ala., 1970), (aff. S.Ct. 4/4/72, No. 70–59), holding Alabama's six months residence in the State and three months in the precinct requirements invalid.

Remaining still is the question of the validity of our thirty-day precinct residency requirement, which presupposes, of course, residence within the State and county wherein the precinct is located.

The Court in Dunn did not have the issue of a thirty-day durational residency provision before it, and, apparently, none of the nine cases decided on April 4 did either. [1] There is language in the decision which seems to indicate that while it is permissible for a state to close its registration books thirty days in advance of an election in order to allow election officers to prepare for the election and to allow the state to investigate a registrant's sworn claim of residence, durational residence requirements per se are not justified, regardless of length. [2]

It is doubtful, in this office's opinion, that the Court, when faced squarely with the issue, will approve a thirty-day precinct residency requirement where, as in South Carolina and Tennessee, there is a thirty day closing law [3] within which administrative tasks prerequisite to the election can be completed. [4]

***2** This office's opinion is that our State and county durational residency requirements are violative of the Equal Protection Clause, and that our precinct residency requirement most probably would be declared invalid if put to a court test, especially in light of the existence of our thirty-day closing law. In view of these conclusions, we recommend that the local registration boards be advised not to impose any of the fixed residency requirements as a prerequisite to registering applicants. What has been said in no way modifies the law that only bona fide residents—(i.e., domiciliaries) are entitled to register and vote in elections in this State. The United States Supreme Court has, in a number of decisions, confirmed the power of the States to require this. See Evans v. Corman, 398 U.S. 422; Kramer v. Union Free School District, 395 U.S. 625; Carrington v. Rash, 380 U.S. 91; Pope v. Williams, 193 U.S. 621; also Dunn, et al. v. Blumstein, supra.

Very truly yours,

Robert W. Brown
Assistant Attorney General

Footnotes

1 In Andrews v. Cody, 327 F. Supp. 793 (M.D. N.C., 1971), (aff. S.Ct., 4/4/72, No. 71–628), a Three-Judge District Court invalidated North Carolina's one year State residency requirement as applied to the right to vote in local elections. The Court pointed out that the 'one year in the State' requirement had to be viewed in relation with the 'thirty days in the election district' requirement, and went on to hold that it was unreasonable to exclude voters who moved from without the State into the State but not those moving within the State because of the one year requirement when both groups had met the thirty day precinct residency provision. However, it was expressly pointed out that the thirty day precinct requirement was not being attacked because it had been satisfied by the plaintiffs.

2 '. . . In addition to the various criminal penalties, Tennessee permits the bona fides of a voter to be challenged on election day . . . where a state has available such remedial action to supplement its voter system, it can hardly argue that broadly imposed political disabilities such as durational residence requirements are needed to deal with the evils of fraud . . ..'
'. . . These durational residence requirements crudely exclude large numbers of fully qualified people. Especially since Tennessee creates a waiting period by closing registration books 30 days before an election, there can be no basis for arguing that any durational residence requirement is also needed to assure knowledgeability . . ..'
'. . . Giben the exacting standard of precision we require of statutes affecting constitutional rights, we cannot say that durational residence requirements are necessary to further a compelling state interest . . ..'
'As a technical matter, it makes no sense to say that one who has been a resident for a fixed duration is presumed to be a resident. In order to meet the durational residency requirement, one must by definition, first establish that he is a resident. A durational residence requirements is not simply a waiting period after arrival in the State; it is a waiting period after residence is established. Thus it is conceptually impossible to say that a durational residency requirement is an administratively useful device to determine residence. The State's argument must be that residence would be presumed from simple presence in the State or county for the fixed waiting period.' (Footnote No. 20)'
Dunn, et al. v. Blumstein, supra.

3 See Sections 23–66 and 23–72.2, Code of Laws of South Carolina, 1962.

4 '. . . To prevent dual voting, state voting officials simply have to cross-check lists of new registrants with their former jurisdictions . . . Objective information tendered as relevant to the question of bona fide residence under Tennessee law—places of dwelling, occupation, car registration, driver's license, property owned, etc.—is easy to double check, especially in light of modern communications. Tennessee itself concedes that '[i]t might well be that these purposes can be achieved under requirements of shorter duration than that imposed by the State of Tennessee . . ..' Appellants' Brief, p. 10. Fixing a constitutional 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. This was the judgment of Congress in the context of presidential elections. And,

on the basis of the statutory scheme before us, it is almost surely the judgment of the Tennessee lawmakers as well. As the court below concluded, the cut off point for registration 30 days Before an election

'reflects the judgment of the Tennessee Legislature that thirty 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.' Dunn, et al v. Blumstein, supra. —— F. Supp. —— (Appendix, pp. 48–49).'

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