

OFFICIAL OPINION NO. 1

March 19, 1974

Honorable Otis R. Bowen, M.D.
Governor of Indiana
Room 206 State House
Indianapolis, Indiana 46204

Dear Governor Bowen :

This is in response to your request for my official opinion concerning the following questions :

1. "What is the proper construction to be given to provisions of the Indiana Constitution and statutes which define age eligibility for holding office?"
2. "How does this affect the appointment of a 17-year old person as Justice of the Peace?"

ANALYSIS

Your questions involve an interpretation of the provisions of the Indiana Constitution and statutes regarding age eligibility for holding public office in light of the ratification of the 26th Amendment to the United States Constitution which lowered the minimum age for *voting* in all states to 18 years.

The 26th Amendment supersedes existing constitutional and statutory provisions which had previously set the minimum age for *voting* at 21. The Indiana General Assembly has statutorily lowered the minimum age for voting to 18. See the Indiana Code of 1971, Section 3-1-7-9.

The crucial question is whether the 26th Amendment also supersedes state requirements for holding public office. In Official Opinion No. 6 of 1972, this office held that certain of the residency requirements for voting contained in Article 2, § 2 of the Indiana Constitution were superseded by decisions of the United States Supreme Court, but only to the extent that the six month residency requirement was struck down. The remainder of Article 2, § 2 which was not before the

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Court, remained in full force and effect. See *Whitcomb v. Affeldt* (1972), 405 U.S. 1034, 92 S.Ct. 1304, 31 L.Ed. 2d 576, and *Dunn v. Blumstein* (1972), 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed. 2d 274.

Article 2, § 2 states:

“In all elections not otherwise provided for by this Constitution, every citizen of the United States, of the age of twenty-one years and upwards, who shall have resided in the State during the six months, and in the township sixty days, and in the ward or precinct thirty days immediately preceding such election, shall be entitled to vote in the township or precinct where he or she may reside.”

Just as the Supreme Court decisions referred to above only struck down the six month residency requirement of Article 2, § 2, the 26th Amendment only supersedes the age requirement for *voting*, not for holding public office. No where in the 26th Amendment did Congress specifically take away the State's inherent power under the 10th Amendment to regulate the minimum requirements for holding public office. If Congress had intended otherwise, it would have been a simple matter to so state in clear and unambiguous language. I am, therefore, of the opinion that minimum age requirements existing prior to the ratification of the 26th Amendment continue in full force and effect.

Support for this view is contained in minimum age provisions in both the United States and Indiana Constitutions and in the Indiana statutes.

A registered voter may declare himself to be a candidate for any public office (Indiana Code of 1971, Section 3-1-9-5, Burns' Ind. Stat. § 29-3605). After the 26th Amendment, those who are 18 years old or over are included in that group. *However, the right to declare candidacy and the right to hold office are not necessarily the same.* A review of Indiana's constitutional and statutory provisions together with those of the United States Constitution relating to age qualifications for holding office is appropriate to illustrate this important distinction.

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I am setting out this list of offices and accompanying minimum ages for those offices where the age limitation is clearly specified.

<i>United States</i>	Article 1, § 2, Clause 2	<i>Age</i>
<i>Constitution:</i>	House of Representatives -----	25
	Article 1, § 3, Clause 3	
	Senate -----	30
	Article 2, § 1, Clause 5	
	President and Vice President --	35
<i>Indiana Constitution:</i>	Article 4, § 2	
	House of Representatives -----	21
	Article 4, § 2	
	Senate -----	25
	Article 5, § 7	
	Governor and Lt. Governor ----	30
	Article 7, § 10	
	Justices of the Supreme Court and	

Court of Appeals must be admitted to the bar 10 years or have been a Judge for at least five years. Indiana's age requirement for admission to the bar is 21. See Admission and Discipline Rule No. 13. Thus, a person would have to be at least 26 to 31 years of age to become a Judge of the Supreme Court or Court of Appeals.

The following is a list of the offices enumerated in the Indiana Code of 1971, Section 3-1-9-5, above quoted, for which any voters may declare candidacy, but for which they must meet minimum age requirements existing prior to the 26th Amendment in order to take the oath and to *hold* office. The minimum age for holding such office accompanies the list.

Members of the United States Congress :	<i>Age</i>
House of Representatives -----	25
Senate -----	30

Members of the Indiana General Assembly :	
House of Representatives ----	21
Senate -----	25

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	<i>Age</i>
Judges:	at least ----- 21
Circuit	(See Indiana Code of 1971, Section 33-13-9-1 governing the Judges.)
Superior	
Probate	
Criminal	
Juvenile	
County	
Prosecuting Attorneys -----	21
Article 7, § 16 covers admission to the bar	
Clerk of the	} at least ----- 21
Circuit Court	
County Auditor	
County Treasurer	
County Recorder	
County Coroner	
County Surveyor	

Since these officers were required to be at least 21 years of age prior to the 26th Amendment, they must still be at least 21 subsequent to its ratification. (See Article 6, § 4.)

The remaining officers enumerated in the Indiana Code of 1971, Section 3-1-9-5 were required to be at least 21 years of age prior to the 26th Amendment. Even though the language governing qualifications for these latter offices is somewhat different from that for Article 6, § 4—office holders—i.e., registered or qualified voters, it is apparent that the 26th Amendment did not alter the existing minimum age requirements for holding those offices.

Therefore, in the case you pose, it was improper for a 17-year-old citizen to be appointed to the office of Justice of the Peace since Justices of the Peace prior to the 26th Amendment were required to be at least 21 years old, and must therefore continue to be at least 21 years of age to take the oath of office.

It would, of course, require explicit amendments to the United States and Indiana Constitutions and the Indiana

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statutes to change the office-holding minimum age requirements noted above. Thus, the 26th Amendment to the United States Constitution only lowers the *voting* age to 18 and does not in any way alter the clear language of the Indiana Constitution and statutes that requires persons who hold the public offices noted above to be at least 21 years of age. It should be noted that the General Assembly and the people of this state always have the opportunity, if they so choose, to amend the State Constitution and statutes to provide otherwise.

CONCLUSION

It is, therefore, my Official Opinion that the United States Constitution and the Indiana Constitution and statutes require that persons holding public office must meet the minimum age requirements for that particular office the same as existed prior to the ratification of the 26th Amendment, whether specified by the Constitution or by statute. Accordingly, a 17-year-old person is not old enough to take the oath of office as a Justice of the Peace in Indiana.