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OFFICIAL OPINION NO. 15

July 6, 1971

Hon. Edgar D. Whitcomb
Governor of the State of Indiana
Room 206 State House
Indianapolis, Indiana 46204

Dear Governor Whitcomb:

This Official Opinion is in response to your questions concerning the effective date of the 26th Amendment to the Constitution of the United States granting the suffrage to citizens 18 years of age and over and as to its application to the city and town elections in Indiana in 1971.

ANALYSIS

The Constitution of the United States reads as follows:

“ARTICLE V—AMENDMENTS. The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, *shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress * * **”
(My emphasis)

In *Maryland Petition Committee v. L. B. Johnson* (1967), 265 F. Supp. 823, the Court discussed the amendment procedure followed in adoption of the 14th Amendment. On July 21, 1868, the Senate and House adopted and transmitted to the Department of State the following resolution adopted by the Senate and concurred in by the House:

“Whereas the legislatures of the states of [listed 29 states] . . . have ratified the fourteenth article of amendment to the Constitution of the United States, duly proposed two thirds of each House of the Thirtieth Congress therefore,

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“Resolved that * * * is hereby declared to be a part of the Constitution of the United States, and it shall be duly promulgated as such by the Secretary of State.” 15 Stat. 709, 710.

The requirement of certification by the Secretary of State was amended by 1 U.S.C.A. §106 (b) on October 31, 1951, which gave the General Service Administrator the duty of publishing, with his certificate, specifying the states by which the same may have been adopted, and that the same has become valid, to all intents and purposes, as a part of the United States Constitution.

As to the effective date of Constitutional Amendments, it was stated in *ex parte* Dillon, (1921), 262 F. 563, affirmed 41 S. Ct. 510, 256 that:

“* * * a constitutional amendment is likewise in full force and effect from and after its ratification by the requisite number of states. In other words, the promulgation by the Department of State [now by the Administrator of General Services] only affords prima facie evidence of ratification, and the promulgation, when made, relates back to the last necessary vote by a state legislature.”

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 other states which had voted ratification prior to Ohio were as follows:

Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Washington, West Virginia, and Wisconsin.

The 26th Amendment to the Constitution of the United States has the effect of amending Art. 2, Section 2, of the

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Constitution of the State of Indiana by changing the minimum age at which a voter qualifies from 21 years to 18 years; and it applies to all Indiana primary and Indiana general elections.

CONCLUSION

It is my official opinion that the 26th Amendment to the Constitution of the United States took effect throughout the United States of America on June 30, 1971, which is the date on which the Ohio Legislature ratified the Amendment, thereby effecting the ratification by a majority of 38 of the 50 states. Consequently, voting registration officials in all counties of the State of Indiana are authorized to register voters of the age of 18 years and upwards who meet all other constitutional qualifications for the franchise. And when so registered, they are entitled to vote in the city and town elections to be conducted throughout the State of Indiana on November 2, 1971, and in all elections thereafter.