



STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY

ROBERT J. DEL TUFO
ATTORNEY GENERAL

April 17, 1991

County Superintendents of Elections
and County Boards of Elections

Re: FORMAL OPINION NO. 2 (1991)

Voter Registration of Homeless Persons.

Dear Superintendents and Board Members:

A question has arisen concerning whether homeless persons may register to vote and, if so, under what conditions. Implicit in this question is the issue of whether such people are entitled to vote if they lack a permanent home. The circumstances surrounding the voting rights of homeless or others without a permanent residence apparently were not originally contemplated by the Legislature and therefore do not fall neatly within any governing statutory provisions. The changing social circumstances which have given rise to increased numbers of homeless individuals compel government to give due accommodation to their right to vote. Accordingly, for the reasons set forth below, you are advised that homeless persons may register and vote, notwithstanding their lack of a permanent place of residence, so long as they satisfy the constitutional requirements of age and of residence within the State, and a given county and election district. Whether these factors are satisfied is a fact-based assessment to be made in the cases of individual voters in the judgment of, and subject to verification by, the Superintendent or County Board of Elections, as appropriate.

Our analysis begins with the recognition that the right to vote is "precious and fundamental" to our notions of a democratic society. Worden v. Mercer Cty. Bd. of Elections, 61 N.J. 325, 346 (1972). Election regulations affecting the electoral process are subject to "close constitutional scrutiny," Matthews v. Atlantic City, 84 N.J. 153, 160 (1980), and are to be liberally construed to further and to protect voters' rights. Gangemi v. Berry, 25 N.J. 1, 12 (1957). This review is designed to ensure each citizen's "constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdic-

tion." Dunn v. Blumstein, 405 U.S. 330, 336, 92 S.Ct. 995, 1000, 31 L.Ed.2d 274, 280 (1972).

Under our State Constitution the right to vote has been granted to all citizens, 18 years of age, who have resided within this State and within the county in which the right is claimed, for 30 days prior to the election at which their votes are to be cast. N.J. Const. (1947), Art. II, ¶3. Implementing legislation enacted in furtherance of this provision, N.J.S.A. 19:4-1, provides that every person satisfying the constitutional requirements, not otherwise disqualified by law "and being duly registered...shall have the right of suffrage and be entitled to vote in the polling place assigned to the election district in which he actually resides, and not elsewhere." (Emphasis supplied) N.J.S.A. 19:31-5 and 19:31-6.3 also provide for registration in the district in which a voter resides.

Nowhere in the State Constitution or in Title 19 (Elections) is there any requirement that a person have a home or even a permanent address as an absolute prerequisite to the exercise of the franchise based on actual residence in an election district. In fulfilling the constitutional and statutory mandates in the context of more traditional disputes over proper voter registration, courts will often turn to an examination of concepts of residence and domicile. State v. Benny, 20 N.J. 238 (1955). "Residence" has been defined as being synonymous with "domicile" when viewed in the context of the voter registration laws. Worden v. Mercer Cty. Bd. of Elections, supra. "Domicile" in turn has been seen as depending on two major elements: a physical presence plus the intent to call that place home. Ibid.; Michaud v. Yeomans, 115 N.J. Super. 200 (Law Div. 1971).

When dealing with a homeless person, the above definitions are not entirely helpful since such persons lack the traditional permanent structure or "home" that most others consider a "residence." Determining whether an individual "actually resides" in a certain election district requires an assessment of whether the person maintains a relationship with "the place or premises so selected as will entitle him at his will to occupy that place or premises." Perri v. Kisselbach, 34 N.J. 84, 88 (1961). Bearing in mind also the guiding principle that voter enfranchisement is favored, Afran v. County of Somerset, 244 N.J. Super. 229 (App. Div. 1990), it must be concluded that if such persons actually reside within a given county, they satisfy the constitutional residency requirement; and if they reside within a given election district, they satisfy the statutory requirement as well, even if in an individual case the homeless individual may move about within the district, provided that such a presence as a

preserve within the election district which may fairly be regarded as what the applicant for registration calls or thinks of as home.

As with all voters, the commissioner of registration in each county has the duty to verify the continued voter qualifications of registrants. See N.J.S.A. 19:31-15 and 19:32-5. This is usually done by mailings to the residence address or contact point shown on the registration. In this vein this Office has previously advised County Boards and Superintendents of Elections that homeless individuals can be registered, so long as they provide one or more contact points by which their continued presence in the county can be verified and where they can be sent sample ballots. See N.J.S.A. 19:14-21 et seq. and N.J.S.A. 19:23-30 et seq. Examples of contact points which have been used elsewhere by homeless voters in the past include homeless shelters, churches and municipal buildings where the homeless may physically reside from time to time or where mail for them will be received. Registration of the homeless from such locations is consistent with the principle that persons have a right to vote to further their political interest where they reside, even if lacking a single permanent physical structure to call home. These principles would also apply if the contact point were a public park or a street location.

While New Jersey has no reported cases involving these precise situations, litigation has occurred in other states where the lack of a permanent residence was used, initially, to justify the government's refusal to allow the homeless to register to vote. Such attempts were found to have violated various constitutional rights of the applicants, and courts have been forceful in criticizing attempts to disenfranchise the homeless in this way. Pitts v. Black, 608 F. Supp. 696 (S.D.N.Y. 1984); Collier v. Menzel, 221 Cal. Repr. 110 (Ct. App. 1985); see also, Committee for Dignity & Fairness for the Homeless v. Tartaglione, (U.S. District Court, E.D. Pa. 1984)(unreported slip opinion, Dkt. No. 84-3447) (recognizing that a homeless shelter may constitute a residence for voting purposes). See also Worden, supra, 61 N.J. 325 (right of bona fide resident college students to register and vote in their university communities); Tp. of New Hanover v. Kelly, 121 N.J. Super. 245 (Law Div. 1972) (military personnel stationed on a federal reservation must be allowed to participate in State and local elections).

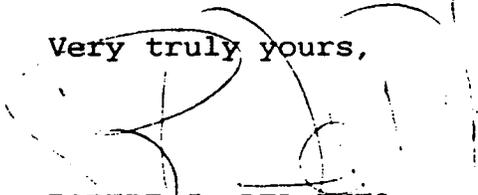
Accordingly, the literal and strict application of some election law requirements must give way and be tailored to the particular circumstances of homeless individuals, even as we recognize that the homeless exhibit different attributes (some may move from shelter to shelter, others from park bench to park bench). For example, despite the additional administrative burden

which may ensue from the acceptance of a voter registration from a homeless applicant who resides in one district but has a mailing address in another, we feel that such action is mandated by law. N.J.S.A. 19:4-1 and 19:31-5 (registrants shall vote in the district in which they actually reside). The portions of other statutes designed to implement the right to vote and to guard against voter fraud, such as those which require a street address for each applicant, or the provisions of N.J.S.A. 19:31-11 which call for notice of a change of address, must be applied in a manner which does not unduly frustrate the voting rights of the homeless. Obviously, for those who can supply statutorily required data, the law requires that it be obtained. However, where such statutory requirements may erect unreasonable barriers to voting, their particular provisions must be harmonized with the right to vote guaranteed by the State and federal constitutions.

Thus, in another example, "street address" must be liberally construed to meet the constitutional mandate of suffrage and can be deemed the streets of an election district if necessary to accommodate the mobile nature of a homeless individual. With respect to street address, we note that N.J.A.C. 15:10-1.5(c)3 allows an investigation of a rural address to determine "the proper information" for completion of mail-in voter registration forms submitted pursuant to N.J.S.A. 19:31-6.1 et seq. We believe that there is analogous authority to investigate with respect to a voter's registration supplied in person by a homeless individual pursuant to N.J.S.A. 19:31-5. Although the Secretary of State's regulations do not allow acceptance of an application giving only a rural address or post office box and lacking a street address, N.J.A.C. 15:10-1.5(c)2, the underlying constitutional and statutory mandate, particularly with respect to an in-person registration, is to procure "such additional information...as may be deemed necessary to give the exact location of the applicant's place of residence." N.J.S.A. 19:31-3b(2). Should problems arise with respect to the house-to-house canvass called for by such statutes as N.J.S.A. 19:31-15, or should use of the mails prove problematical as a means of verifying continued residence (as called for by the same statute), methods should be developed to supply alternative confirmation as to whether the registrants continue to be entitled to vote. In this regard, protecting the integrity of the electoral process is balanced by the equal right of a homeless citizen to have fair access to the voting booth. These practical approaches to supervising voter registration procedures for the homeless will accommodate and preserve the State's interest in preventing fraudulent or multiple voting. Worden, 61 N.J. at 346-347.

In sum, you are advised that the status of being a homeless person is not, and cannot be, a basis to deny an individual's right to vote so long as the constitutional and statutory benchmarks of age and State, county and district residence are met. The verification of these elements in an individual case falls within the realm of day-to-day elections administration. And in some instances it may be necessary to tailor specific statutory requirements for voter registration to the particular circumstances of homeless individuals on a case-by-case basis. While homeless voters must therefore be properly subject to the verification of the neutral criteria for voting, they may not be singled out as a class and be required to overcome greater barriers than other voters to gain entrance to the voting booth.

Very truly yours,


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