ROLAND W. BURRIS
ATTORNEY GENERAL
STATE OF ILLINOIS

July 22, 1992

FILE NO. 92-014

ELECTIONS:
Registration of Homeless People

Honorable Grace Mary Stern
Vice-Chairman of the House
Committee on Election Law
2087 Stratton Building
Springfield, Illinois 62706

Dear Representative Stern:

I have your letter wherein you inquire whether, under the provisions of the Illinois Election Code (Ill. Rev. Stat. 1991, ch. 46, par. 1-1 et seq.), homeless people may be permitted to register to vote. For the reasons hereinafter stated, it is my opinion that citizens of Illinois who are otherwise eligible to register may register to vote, even though they do not reside in traditional homes, if they can establish the existence of a "home base" within the election district and designate a mailing address at which they can be reached.

500 SOUTH SECOND STREET • SPRINGFIELD, ILLINOIS 62706 • 217-782-1090 • TDD 217-785-2771 • FAX 217-785-2551
100 WEST RANDOLPH STREET • CHICAGO, ILLINOIS 60601 • 312-814-3000 • TDD 312-814-7123 • FAX 312-814-3806

Sections 3-1, 3-2 and 4-8 of the Election Code (Ill. Rev. Stat. 1991, ch. 46, pars. 3-1, 3-2, 4-8) respectively provide, in pertinent part:

> "§ 3-1. Every person having resided in this State and in the election district 30 days next preceding any election therein * * * and who is a citizen of the United States, of the age of 18 or more years is entitled to vote at such election for all offices and on all propositions. * * *"
>
> "§ 3-2. A permanent abode is necessary to constitute a residence within the meaning of Section 3-1. * * *"
>
> "§ 4-8.
>
> * * *
>
> The registration record card shall contain the following and such other information as the county clerk may think it proper to require for the identification of the applicant for registration:
>
> * * *
>
> Residence. The name and number of the street, avenue, or other location of the dwelling, including the apartment, unit or room number, if any, and in the case of a mobile home the lot number, and such additional clear and definite description as may be necessary to determine the exact location of the dwelling of the applicant. Where the location cannot be determined by street and number, then the section, congressional township and range number may be used, or such other description as may be necessary, including post-office mailing address.
>
> Term of residence in the State of Illinois and precinct. This information shall be furnished by the applicant stating the place or places where he resided and the dates during which he resided in such place or places during the year next preceding the date of the next ensuing election.
>
> * * * "

There are no Illinois cases which address the issue of what may constitute a residence for voting purposes in the context of the urban homeless population which has developed in recent years. In two older cases, the votes of wandering farm hands were invalidated on the grounds that they possessed no residence within the township. (Clark v. Quick (1941), 377 Ill. 424, 435-36; Kelly v. Brown (1923), 310 Ill. 319, 329-30.) In each case, however, the contested voter had not been physically within the township for some time immediately prior to the election, and in Kelly v. Brown, the evidence indicated that the voter's home base, to which he returned between farm jobs, was in another county. In neither case was the voter disqualified on the basis of lack of a traditional home.

Three other cases from the same era provide the leading authority on construction of the statutory requirement of a residence or permanent abode generally. In Pope v. Board of Election Commissioners (1938), 370 Ill. 196, it was held that an attorney who practiced law in East St. Louis and owned property there, but who had for some time actually resided, with his wife, in hotels in St. Louis, was not a resident of East St. Louis for voting purposes. The court distinguished domicile from residence, concluding that residence means permanent abode or dwelling, and that the statute therefore

does not permit voting from a business address where one has never lodged.

Park v. Hood (1940), 374 Ill. 36, concerned an election challenge in which the qualifications of several voters were questioned on the issue of residence. The opinion states:

> "* * * A real and not an imaginary abode, occupied as his home or dwelling, is essential to satisfy the legal requirements as to the residence of a voter. One does not lose a residence by temporary removal with the intention to return, or even with a conditional intention of acquiring a new residence, but when one abandons his home and takes up his residence in another county or election district, he loses his privilege of voting in the district from which he moved. * * *
>
> * * * "
>
> (Park v. Hood (1940), 374 Ill. 36, 43.)

The court held that the individual voters, who had temporarily lived in other places while seeking employment, but who had at least occasionally visited the family home within the jurisdiction, had retained their residence for voting purposes.

The third case, Coffey v. Board of Election Commissioners (1941), 375 Ill. 385, was factually similar to Pope v. Board of Election Commissioners. An East St. Louis businessman and his wife established a home in Missouri in order to enroll their younger children in St. Louis schools, while their older children remained in the East St. Louis home. The court reaffirmed the holding in Pope that residence means permanent abode and relates to the place where the voter is actually living; proof of domicile is not proof of residence.

Although each of these opinions assumes the existence of a traditional home when referring to residence or permanent abode, there is nothing therein which necessarily requires the existence of a traditional home as a prerequisite to voting. The principal concern of the courts was that the voter actually, presently dwell within the election district, as opposed to merely having a business or other connection with it. The holdings do not preclude a construction of the pertinent statutes which would permit the registration of otherwise qualified homeless individuals who dwell within an election district, albeit not in traditional homes.

There have been three decisions in other jurisdictions within the past 10 years which specifically relate to the rights of the urban homeless to vote. All three are in agreement, and two include well-reasoned constitutional analyses of the pertinent issues.

The first decision, Committee for Dignity and Fairness for the Homeless v. Tartaglione (E.D. Pa., Sept. 14, 1984) No. 84-3447, is merely an order and decree requiring the registration of any homeless person who has established a relationship with a shelter which will accept first class non-forwardable mail for the person. The second, and most often cited, is Pitts v. Black (S.D.N.Y. 1984), 608 F. Supp. 696, wherein the court concluded that the application of the New York election laws in a manner which disenfranchised homeless individuals

violated the equal protection clause of the Fourteenth Amendment to the United States Constitution and the Civil Rights Act (42 U.S.C. § 1983). The third case, Collier v. Menzel (1985), 176 Cal. App. 3d 24, 221 Cal. Rptr. 110, followed Pitts v. Black, holding that denying voters' applications for registration on the ground that they listed a city park as their residence violated the voters' right to equal protection.

Both Pitts v. Black and Collier v. Menzel found that the right to vote is a fundamental right, and restrictions thereon are subject to strict scrutiny. The courts acknowledged that there were significant State interests underlying voter residency requirements, including: 1) prevention of vote fraud and protection of the integrity of the electoral system; 2) identifying an electorate that has a stake in the election; and 3) administrative workability. However, the courts found that these interests could be served by less restrictive alternatives than disenfranchising homeless individuals. The Pitts court offered as examples the decree fashioned by the district court in Committee for Dignity and Fairness for the Homeless v. Tartaglione, and a similar Washington, D.C., proposal which permitted a homeless individual to specify a fixed residence location and designate a mailing address, concluding:

> "Homeless individuals identifying a specific location within a political community which they consider their 'home base', to which they return regularly, manifest an intent to remain for the

> present, and a place from which they can receive messages and be contacted, satisfy the more stringent domicile standard and should not be disenfranchised solely because they lack a non-traditional [sic] residence." Pitts v. Black (S.D.N.Y. 1984) 608 F. Supp. 696, 710.

Following the reasoning of the courts in Pitts v. Black and Collier v. Menzel, it is my opinion that the Illinois Election Code must be construed to permit the registration of homeless persons who can establish a "home base" under the criteria set forth in the former. A "permanent abode", for purposes of residence, may be a place to which the individual returns regularly and intends to remain for the present, whether or not that place is a traditional home. Section 4-8 of the Election Code allows for such a "residence", since it permits designation of a residence by "such other description as may be necessary, including post office mailing address", to identify it. The key objective in the older Illinois cases was to ascertain, as suggested in Pitts v. Black, the place which is the center of the individual's life, the place in which he or she presently intends to remain. It is my opinion that construing section 4-8 of the Election Code to permit homeless persons to register by specifying their "home base" and a mailing address within the jurisdiction of the appropriate election authority is consistent with the Illinois precedent and with the current interpretation of the United States Constitution.

Notwithstanding this conclusion, however, I believe that the issue of voting by homeless people should be addressed through the enactment of legislation to codify the more flexible definition of "residence" which, in my opinion, is required by the United States Constitution, and to provide the safeguards deemed necessary to protect the significant State interests which may be affected. In this regard, I note that Senate Bill 1992, which amends several provisions of the Elections Code to permit homeless persons to register to vote through designation of a mailing address which they are authorized to use, has passed both Houses and will be sent to the Governor for action.

A statutory mechanism is needed to guide election officials in registering the homeless. The State has the prerogative, within the parameters of the Fourteenth Amendment, to provide reasonable measures to protect the integrity of the election process while insuring that no otherwise eligible person is disenfranchised merely because he or she lacks a traditional home. Senate Bill 1992 appears to strike an appropriate balance. Therefore, I urge that Senate Bill 1992 be enacted into law as expeditiously as possible.

Respectfully yours,

Roland W. Burris

ROLAND W. BURRIS
ATTORNEY GENERAL