STATE OF NEBRASKA
# Office of the Attorney General
2115 STATE CAPITOL BUILDING
LINCOLN, NEBRASKA 68509-8920
(402) 471-2682
FAX (402) 471-3297

DON STENBERG
ATTORNEY GENERAL

L. STEVEN GRASZ
SAM GRIMMINGER
DEPUTY ATTORNEYS GENERAL

#92025

STATE OF NEBRASKA
OFFICIAL
FEB 19 1992
DEPT. OF JUSTICE

DATE: February 19, 1992

SUBJECT: Article VI Section 1, Nebraska Constitution; Electors Under 18 Years of Age.

REQUESTED BY: Allen J. Beermann, Nebraska Secretary of State

WRITTEN BY: Don Stenberg, Attorney General
Dale A. Comer, Assistant Attorney General

In our Opinion of the Attorney General No. 91080, dated November 12, 1991, we responded to several questions which you posed concerning the voter age requirements set out in Article VI, Section 1 of the Nebraska Constitution and the eligibility of certain voters for several school bond elections which were scheduled after the date of the 1991 general election, but before the end of calendar year 1991. It has come to our attention that certain conclusions in that opinion with respect to voter eligibility under the state constitution are impacted by provisions of the federal constitution. Therefore, the purpose of this opinion is to deal with those additional concerns.

In your original opinion request, you noted that school bond elections were scheduled in four Nebraska counties in 1991 after the date of the normal November general election. Voter registration for those school bond elections closed on the second Friday preceding each election. Your initial question was whether 17-year-old voters who turned 18 between the date of the general election and the date of the close of voter registration for the school bond elections were eligible to vote at the bond elections under Article VI, Section 1 of the Nebraska Constitution. We concluded that the clear language of that state constitutional provision prevented the individuals in question from voting during the remainder of calendar year 1991.

L. Jay Bartel, J. Kirk Brown, Laurie Smith Camp, Elaine A. Chapman, Delores N. Coe-Barbee, Dale A. Comer, David Edward Cygan, Mark L. Ells, James A. Elworth, Lynne R. Fritz, Royce N. Harper, William L. Howland, Marilyn B. Hutchinson, Kimberly A. Klein, Donald A. Kohtz, Sharon M. Lindgren, Charles E. Lowe, Lisa D. Martin-Price, Lynn A. Melson, Harold I. Mosher, Fredrick F. Neid, Paul N. Potadle, Marie C. Pawol, Kenneth W. Payne, LeRoy W. Sievers, James H. Spears, Mark D. Starr, John R. Thompson, Susan M. Ugai, Barry Waid, Terri M. Weeks, Alfonza Whitaker, Melanie J. Whittamore-Mantzios, Linda L. Willard

Article VI, Section 1 of the Nebraska Constitution provides, in pertinent part:

> Every citizen of the United States who has attained the age of 18 years on or before the first Tuesday after the first Monday in November and has resided within the State and the county and voting precinct for the terms provided by law shall...be an elector for the calendar year in which such citizen has attained the age of 18 years and for all succeeding calendar years.

For the reasons stated in our previous opinion, we continue to believe that this language from the Nebraska Constitution would prevent the 18-year-olds in question from voting at the school bond elections after the general election.

However, Section 1 of the Twenty Sixth Amendment to the United States Constitution provides that:

> The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

We have been unable to find any cases which suggest that this federal constitutional provision does not apply to local elections such as school bond elections. Moreover, it is clear that the federal constitution controls over conflicting provisions in a state constitution, and that federal law is the supreme law of the land and takes precedence over state law. Reynolds v. Sims, 377 U.S. 533 ( 1964); In re Estate of Florence Hendricksen, 156 Neb. 463, 56 N.W.2d 711 (1953). Therefore, since the federal constitutional provision must control, we conclude that those 17-year-olds who turn 18 after the date of the general election but before the close of voter registration should be allowed to vote at elections during the remainder of the calendar year. To the extent that our earlier opinion suggests otherwise, it is hereby modified.

We have reviewed our conclusions in Opinion No. 91080 with respect to the other questions which you raised at that time. We do not believe that our comments above concerning the federal constitution apply to those additional questions, and our conclusions stated in Opinion No. 91080 concerning those questions remain unchanged. In particular, we would note that individuals who turn 18 after the close of voter registration but before the date of the school bond election would not be eligible to vote at that election because they could not meet the registration requirements. They would thus not be disqualified on the basis of their age, but rather on the basis of their inability to properly

register to vote.

It is also our understanding that there is currently legislation before the Unicameral which would propose an amendment to our Nebraska Constitution which would allow all individuals who are 18 to vote. In our view, such legislation remains advisable, if for nothing else than to bring the Nebraska Constitution into conformance with the provisions of the Twenty Sixth Amendment of the United States Constitution.

Sincerely yours,

DON STENBERG
Attorney General

Dale A. Comer
Assistant Attorney General

Approved by:

Attorney General