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July 17, 1972

FILE NO:
S-491

MARRIAGE AND DIVORCE:
Necessity for Parental Consent
for Sixteen-Year-Old Male

Honorable Jack Hoogasian
State's Attorney
Lake County
Courthouse
Waukegan, Illinois 60085

Dear Mr. Hoogasian:

I have your letter advising that the parents of a male between the ages of sixteen and eighteen have asked whether their son can contract a marriage, with their consent, under "AN ACT to revise the law in relation to marriages", Ill. Rev. Stat. 1971, ch. 89.

Section 3 of the above Act provides:

"The following persons may contract and be joined in marriage:

"(a) Male persons of 21 or more years and female persons of 18 or more years; or

"(b) Male persons of 18 or more years and female persons of 16 or more

years. However, the parent or guardian of such persons must appear before the county clerk in the county where either such minor person resides, or before the county clerk to whom application for a license under Section 6 is made, and make affidavit that he or she is the parent or guardian of such minor and give consent to the marriage. Such parent or guardian shall, when giving consent to such marriage, also make affidavit as to the date and place of birth, and place of residence of such minor and submit such proof of such minor's age as the county clerk finds necessary to comply with the purposes of the Act."

I issued opinion No. S-490, dated June 30, 1972, finding that the age differential in sec. 3 of that Act, where male persons were required to be twenty-one years of age and females eighteen years of age to contract marriage without parental consent, was discriminatory and unconstitutional under the Equal Protection Clause of the Federal Constitution, the Illinois Equal Protection Clause, Article I, sec. 2, and the guarantee of equal protection to the sexes, Illinois Constitution, Article I, sec. 18.

I believe that the question you present is subject to the same rules and reasoning set out in opinion No. S-490, and I refer you to that opinion for a detailed analysis of the reasoning involved.

It is therefore my opinion that sec. 3 of "AN ACT to revise the law in relation to marriages" is unconstitutional insofar as it differentiates between the sexes,

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permitting a female person between the ages of sixteen and eighteen to marry with parental consent, and denying this right to the male, requiring him to be aged eighteen to twenty-one to marry with parental consent. Under the Federal and Illinois Constitutions, a sex discrimination and denial of equal protection therefore arises. The nondiscriminatory age for both sexes to marry with parental consent would be the ages of sixteen to eighteen.

Very truly yours,

A T T O R N E Y G E N E R A L