ELECTIONS: In re residence of persons employed in service - civil or military.

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June 25, 1942

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Mr. Frank L. DuBoise
Assistant, Board of ElectionCommissioners
County Court House
Kansas City, Missouri

Dear Sir:

This is in reply to your letter of June 23rd, wherein you request an opinion from this department on the following statement of facts:

> "A legal question has arisen in our office regarding certain individuals' voting rights, that I should like to have clarified.
>
> "Article VIII, Sec. 7 of the Constitution of Missouri says in part:
>
> > "'For the purpose of voting, no person shall be deemed to have gained a residence by reason of his presence, or lose it by reason of his absence, while employed in the service, either civil or military, of this state, or of the United States; * * *'
>
> "It is generally agreed here that an individual's residence is not lost through governmental employment either in or out of the state, but many think that a voting right is gained through one year of residence within the state, whether that residence is because of governmental employment or not. I think that the second position is entirely inconsistent with the first."

It will be noted from said Section 7, supra, that a person does not gain or lose his residence by reason of his absence from county or voting precinct because he is employed in the service either civil or military of this State or of the United States. This provision, according to the views that the courts have taken, does not deprive the voter of making his choice of voting at the place where he is working in civil or military service providing such person has been there long enough to establish a voting residence. This section was before the St. Louis Court of Appeals in 1934, in the case of Chomeau v. Roth, 72 S. W. (2d) 997. In that case, the question before the court was, the right of a student to vote. In discussing this provision of the Constitution, the court said at l. c. 999:

> "* * * Our Missouri Constitution provides in article 8, sec. 7 (Const. art. 8 sec. 7, p. 677, Mo. St. Ann.), that for the purpose of voting, no person shall be deemed to have gained a residence by reason of his presence, or to have lost it by reason of his absence, while a student of any institution of learning. So the Constitution leaves the student much as it finds him, permitting him either to retain his original residence for voting purposes, or to take upa residence wherever his school is located if he so elects. In other words, mere physical presence at the school is not enough either to gain for him a voting residence at the school, or to cause him to lose his existing voting residence at his home; the whole question, as in all similar situations, being largely one of intention, to be determined not alone from the evidence of the party himself, but in the light of all the facts and circumstances of the case. Hall v. Schoenecke, 128 Mo. 661, 31 S. W. 97; Goben v. Murrell, 195 Mo. App. 104, 190 S. W. 986, 197 S. W. 432.

> "The two cited cases, and particularly the former, control this case in all essential respects. As they announce the law, it is entirely possible for a student to gain a residence at the place where he is attending school, although he may have gone there for no other purpose than to attend school; the question of whether a change of residence is effected depending upon the intention with which the removal from the former residence was made. A temporary removal for the sole purpose of attending school, without any intention of abandoning his usual residence, and with the fixed intention of returning thereto when his purpose has been accomplished, will not constitute such a change of residence as to entitle the student to vote at his temporary abode. But conversely, an actual residence, coupled with the intention to remain either permanently or for an indefinite time, without any fixed or certain purpose to return to the former place of abode, is sufficient to work a change of domicile. Nolker v. Nolker (Mo. Sup.) 257 S. W. 789; Finley v. Finley (Mo. App.) 6 S.W. (2d) 1006."

It will be noted, that the court in expressing its views indicated that it was a matter of the intention of the voter; that is if the voter is at a certain place and has resided there long enough to establish residence and he shows an intention to establish a residence, then the foregoing provisions of the Constitution would not deprive him of the right to do that.

In the case of Hall v. Schoenecke, 128 Mo. 661, at l. c. 666, in speaking of the right of a student to vote, the court said:

> "Each case must, then, depend upon the facts. There is no doubt that a student may become a resident of the place where

> the college is located, though he only went there for the purpose of attending school. Whether he has done so or not, depends upon all the facts and circumstances. The fact that he is supported and maintained by his parents, and spends his vacation with them, are strong, but not necessarily conclusive, circumstances to prove that he has not changed his residence. See cases cited in note 6 Am. & Eng. Encyclopedia of Law, p. 278. The question is, as in other cases, largely one of intention, * * * * * * *."

CONCLUSION

It is therefore, the opinion of this department, that a voting right may be gained through one year of residence within this state whether that residence is because of governmental employment or not. In other words, if the voter is in this state, engaged in civil or military service, if he so desires and shows an intention to do so, he may establish a voting residence in this state.

Respectfully submitted

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APPROVED:

ROY McKITTRICK
Attorney General

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