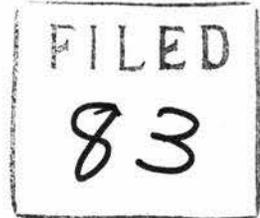


ELECTIONS:  
RESIDENCE:

Persons residing on government lands ceded by the state are not residents for the purpose of voting.

June 9, 1948



Honorable Wayne V. Slankard  
Prosecuting Attorney  
Newton County  
Neosho, Missouri

Dear Mr. Slankard:

This is in reply to your request for an opinion, which we will restate for the purpose of brevity, and which is essentially as follows:

Are the persons at present residing on land comprising Camp Crowder, located in Newton County, residents of Missouri for voting purposes?

At the outset, it would be well to state that this opinion will be limited to the residence qualifications only of the above-named persons and is not concerned with any of the other qualifications for voting as required by the Constitution and statutes, nor is there any attempt to go into the matter of intention as these are individual matters and could only be applied to the individual cases.

Article VIII, Section 2 of the Constitution Missouri adopted in 1945, provides as follows:

"All citizens of the United States, including occupants of soldiers' and sailors' homes, over the age of twenty-one who have resided in this state one year, and in the county, city or town sixty days next preceding the election at which they offer to vote, and no other person, shall be entitled to vote at all elections by the people; provided, no idiot, no insane person and no person while kept in any poorhouse at public expense or while confined in any public prison shall be entitled to vote, and persons convicted of

Honorable Wayne V. Slankard

felony, or crime connected with the exercise of the right of suffrage may be excluded by law from voting." (Underscoring ours.)

Section 11469, Mo. R. S. A., 1939, provides, in part, as follows:

"All citizens of the United States, including occupants of soldiers' and sailors' homes, over the age of twenty-one years who have resided in this state one year, and the county, city or town sixty days immediately preceding the election at which they offer to vote, and no other person shall be entitled to vote at all elections by the people: Provided, each voter shall vote only in the township in which he resides, \* \* \*"

In 1943 the 62nd General Assembly passed House Bill No. 397 (found in Laws of Missouri, 1943, page 627), Sections 12691.1 and 12691.2, Mo. R. S. A., 1939, in which the State of Missouri ceded to the United States exclusive jurisdiction over lands acquired by purchase, condemnation, or otherwise, prior to the effective date of the act, as sites for customhouses, courthouses, post offices, arsenals, forts, and other needful buildings required for military purposes. Section 2 of said act is as follows:

"Exclusive jurisdiction in and over any land so acquired, prior to the effective date of this Act, by the United States shall be, and the same is hereby, ceded to the United States for all purposes, saving and reserving, however, to the State of Missouri the right of taxation to the same extent and in the same manner as if this session had not been made; and further saving and reserving to the State of Missouri the right to serve thereon any civil or criminal process issued under the authority of the State, in any action on account of rights acquired, obligations incurred, or crimes committed in said State, but outside the boundaries of such land, but the jurisdiction so ceded to the United States shall continue no longer than the said United States shall own such lands and use the same for the purposes for which they were acquired."

Honorable Wayne V. Slankard

Section 3 of House Bill No. 397 was an emergency clause in which certain areas of land were enumerated as being in contemplation of the Legislature at that time, among which was Camp Crowder. This enactment, providing for the cession of exclusive legislation, followed generally similar legislation in other states in which the various states preserved merely the right of taxation and the service of process.

The problem which we are confronted is whether or not, by the above enactment, these certain lands ceased to be a part of the State of Missouri so that one taking up domicile thereon could be said to reside in the State of Missouri so as to meet the residence qualifications for voters as contained in the Constitution and Section 11469, supra.

The pertinent portion of our Federal Constitution by which the Federal government has been given the right to legislate over certain land areas is Article I, Section 8, Clause 17, which provides:

"To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings."

Perhaps the leading case on this problem is that of *Herken v. Glynn*, 101 Pac. (2d) 946, where the authorities on the subject are collected. In the course of this opinion the court said, l.c. 950:

"In authorities treating the matter generally, it is said that where a cession of a tract is made by a state to the United States for the purposes mentioned in the above constitutional provision, and there is no reservation of jurisdiction by the state other than the right to serve civil and criminal process on the ceded lands, persons who reside on such lands do not acquire any elective franchise as inhabitants of the ceding state. See *McCrary on Elections*, 4th Ed., Sec. 89, p. 68; *Paine on Elections*,

Honorable Wayne V. Slankard

Sec. 63, p. 44; Kennan on Residence and Domicile, Sec. 493, p. 844; 20 C. J., Elections, Sec. 33, p. 74; 18 Am. Jur., Elections, Sec. 66, p. 224."

Judge Story, a foremost authority on the Constitution of the United States, in discussing Article I, Section 8, Clause 17, had this to say:

"Sec. 1224. The other part of the power, giving exclusive legislation over places ceded for the erection of forts, magazines, etc., seems still more necessary for the public convenience and safety. The public money expended on such places, and public property deposited in them, and the nature of the military duties which may be required there, all demand that they should be exempted from State authority. In truth, it would be wholly improper, that places, on which the security of the entire Union may depend, should be subjected to the control of any member of it. The power, indeed, is wholly unexceptionable; since it can only be exercised at the will of the State; and therefore it is placed beyond all reasonable scruple. Yet, it did not escape without the scrutinizing jealousy of the opponents of the Constitution, and was denounced, as dangerous to State sovereignty.

"Sec. 1225. A great variety of cessions have been made by the States under this power. And generally there has been a reservation of the right to serve all State process, civil and criminal, upon persons found therein. This reservation has not been thought at all inconsistent with the provision of the Constitution; for the State process, quoad hoc, becomes the process of the United States, and the general power of exclusive legislation remains with Congress. Thus, these places are not capable of being made a sanctuary for fugitives, to exempt them from acts done within, and cognizable by, the States to which the territory belonged; and at the same time Congress is enabled to accomplish the great objects of the power.

Honorable Wayne V. Slankard

"Sec. 1227. It follows from this review of the clause, that the States cannot take cognizance of any acts done in the ceded places after the cession; and, on the other hand, the inhabitants of those places cease to be inhabitants of the State, and can no longer exercise any civil or political rights under the laws of the State. But if there has been no cession by the State of the place, although it has been constantly occupied and used, under purchase, or otherwise, by the United States for a fort, arsenal, or other constitutional purpose, the State jurisdiction still remains complete and perfect."  
(Underscoring ours.)

(Story on the Constitution, Fifth Edition, Volume 2, pages 131, 132.)

In the case of McMahon v. Polk, 10 S. Dak. 296, 73 N. W. 77, the court, after quoting Judge Story, said as follows, l.c. 79:

" \* \* \* The doctrine resting upon and sustained by an unruffled current of authority seems to be that all political powers and jurisdiction over a military reservation, not expressly retained by a state, are surrendered absolutely to the general government by a voluntary transfer of lands for the exclusive use of the army or navy; and consequently a person residing thereon acquires none of the constitutional qualifications of an elector. In re Town of Highlands (Sup.) 22 N. Y. Supp. 137; Opinion of Judges, 1 Metc. (Mass.) 580; Sinks v. Reese, 19 Ohio St. 306; Com. v. Clary, 8 Mass. 72; McCrary, Elect. (4th Ed.) Sec. 89. \* \* \*"

In Johnson v. Morrill, 126 Pac. (2d) 873, the Supreme Court of California considered whether or not residents of housing units adjacent to military naval bases and constructed under the authority of the Lanham Act, Public Law No. 849, 76th Congress, 54 Stats. 1125, 42 U.S.C.A., Section 1347, were residents of the State of California so as to be entitled to vote. Section 10 of the Lanham Act (42 U.S.C.A., Section 1547) reads:

"Notwithstanding any other provision of law, the acquisition by the Administrator of any real property pursuant to sub-chapters II-IV

Honorable Wayne V. Slankard

shall not deprive any State or political subdivision thereof, including any Territory or possession of the United States, of its civil and criminal jurisdiction in and over such property, or impair the civil rights under the State or local law of the inhabitants on such property. \* \* \*"

The court held that the right to vote was a civil right and, therefore, was not impaired by the mere fact of Government ownership of the lands in question because the United States had not attempted to exercise exclusive jurisdiction over such lands. The decision turned on the fact that there had been no provision made for exclusive jurisdiction by the United States and that the State of California still controlled such lands and their laws were in force except where they might contravene the purpose for which the lands were being used by the Federal government. The court indicated that the land and buildings thereon were not such that they would come under the operation of Article I, Section 8, Clause 17 of the Constitution, because not being used for any of the purposes contained therein, and reiterated the principle that "the United States cannot be compelled to accept the burdens of exclusive jurisdiction along with the title to land acquired for purposes not strictly within the classes designated in the Constitution." (Silas Mason Co. v. Tax Commission, 302 U.S. 186, 58 S. Ct. 233, 82 L. Ed. 187; Atkinson v. State Tax Commission, 303 U.S. 20, 58 S. Ct. 419, 82 L. Ed. 621, 1.c. 879.)

It is well settled that the United States government may acquire land within a state by donation, purchase or condemnation and devote the same to a public use without drawing such lands from the jurisdiction of the state (Surplus Trading Co. v. Cook, 281 U.S. 647, 652, 50 S. Ct. 455, 74 L. Ed. 1091). And it is not questioned that under the law the state may cede and the United States may accept cession of jurisdiction upon any express terms, conditions or reservations (United States v. Unzeuta, 281 U.S. 138, 50 S. Ct. 284, 74 L. Ed. 761), and that the state and the United States may make any suitable agreement with respect to mutual or exclusive exercise of jurisdiction over land acquired or to be acquired by the United States (Collins v. Yosemite Park & C. Co., 304 U.S. 518, 58 S. Ct. 1009, 82 L. Ed. 1502).

In the case of United States v. City of Chester, 144 Fed. (2d) 415, the court said, 1.c. 422:

"If, however, lands were acquired by the United States within a State by purchase or

Honorable Wayne V. Slankard

otherwise with the consent of a state legislature pursuant to Article I, Section 8, Clause 17 of the Constitution, the Federal Government might exercise exclusive jurisdiction over such lands and Congress alone might legislate in regard to them and in respect to the people who inhabited them. As is stated in *Surplus Trading Co. v. Cook*, supra, 281 U.S. at page 652, 50 S. Ct. 456, 74 L. Ed. 1091, "'Exclusive legislation" is consistent only with exclusive jurisdiction.' On the other hand under the decision of *James v. Dravo Contracting Co.*, supra, a State might condition its consent to the acquisition of land by the United States on the retention by the State of jurisdiction for all purposes not inconsistent with those with which the United States was acquiring the land. While it must be assumed that the terms of the consent would determine the extent of the jurisdiction retained by the State in respect to the land and that the qualification of its consent by the State would be effective under the authority last cited, may not the provisions of Section 10 of the Lanham Act have been intended by Congress to be treated as a waiver by the United States of a possible exclusive jurisdiction, or at least as precatory to the end that the United States should not exercise exclusive jurisdiction over lands acquired for housing? We think the answers to these questions should be in the affirmative.  
\* \* \*

The Supreme Court of the State of Kansas, passing upon the rights of voters who were residents of housing units constructed under the provisions of the Lanham Act, in the case of *State ex rel. Parker v. Corcoran*, 155 Kan. 714, 128 Pac. (2d) 999, 142 A.L.R. 423, ruled in accord with the California court in the case of *Johnson v. Morrill*, supra. However, in the same opinion, and on another set of facts, the court referred to its previous decision in the case of *Herken v. Glynn*, supra, with respect to residents of land purchased by the Federal government designed for use as a post office building. In line with the above-quoted language in the *City of Chester* case, holding that when the Federal government, under authority of Congress, exercises exclusive legislation over a tract of land situated within the state for any of the purposes mentioned in the provision of the Federal Constitution, the court said, l.c. 428:

Honorable Wayne V. Slankard

"It is well settled in this state, and generally elsewhere, that when the Federal government, under authority of Congress, exercises exclusive legislation over a tract of land situated within the state for any of the purposes mentioned in the provision of the Federal constitution above quoted, and such exercise of exclusive legislation by Congress is consented to by the state under a statute similar to ours above quoted, a resident of such a tract of land is not deemed a resident of the state with authority to vote at state elections. See Herken v. Glynn, 151 Kan. 855, 101 P (2d) 946, where the authorities on the subject are collected."

In the particular problem before us we are concerned with land acquired for use as an army camp in carrying out governmental functions of the United States during time of war, and which quite clearly comes under the provisions of Article I, Section 8, Clause 17 of the Constitution. In view of the decisions on the subject, it is our opinion that when exclusive jurisdiction has been ceded by the states to the Federal government of lands to be used for any of the purposes enumerated in Article I, Section 8, Clause 17 of the Constitution, the United States acquires exclusive jurisdiction over such land subject only to such reasonable reservations as may have been mutually agreed upon between the state and the Federal government.

We do not now pass upon the status of persons who are residing on government-owned land purchased under the authority of the Lanham Act, 42 U.S.C.A., Section 1547, or any other act of Congress providing for government purchase of lands within a state for purposes other than those enumerated in Article I, Section 8, Clause 17 of the Federal Constitution.

Inasmuch as the state has ceded exclusive jurisdiction to the land on which Camp Crowder is located, we think that the persons who are residents on this land do not come within the provisions of Article VIII, Section 2 of the Missouri Constitution, and Section 11469, Mo. R. S. A., 1939, so as to become eligible voters.

#### CONCLUSION

Therefore, it is the opinion of this department that so long as the United States shall own such land and use the same as an

Honorable Wayne V. Slankard

army camp the residents of Camp Crowder do not reside in the State of Missouri so as to become eligible voters.

Respectfully submitted,

JOHN R. BATY  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General