

**OPINION
45-208**

May 22, 1945 (OPINION)

MEMBERS OF U.S. ARMED FORCES

RE: Domicile - Voting Place

You have requested my opinion concerning the following questions:

1. May a person domiciled at Fort Lincoln, North Dakota establish a residence in the voting district where the fort is located and vote therein if he is a citizen of the United State and has resided in this state and at Fort Lincoln for the period prescribed by law?
2. Is the tangible personal property of a person stationed and residing at Fort Lincoln subject to assessment and taxation under the laws of North Dakota? and
3. Does the fact that a person stationed at Fort Lincoln, North Dakota, has voted in a state, national, or local election, make the personal property owned by him, and situated within the territorial limits of said fort, taxable under the laws of this state?

I shall endeavor to answer the above questions in the order stated.

1. It is my understanding the Fort Lincoln is a military reservation of the United States and that its use by the federal government as a military post has not been abandoned. Jurisdiction over four military reservations, including Fort Lincoln, was ceded to the United States under Sec. 204 of the North Dakota Constitution subject to the proviso that "legal process, civil and criminal, of this state, shall extend over such reservations in all cases in which exclusive jurisdiction is not vested in the United States, or of crimes not committed within the limits of such reservations."

Section 54-0106 of the North Dakota Revised Code of 1943 provides:

The sovereignty and jurisdiction of this state extends to all places within its boundaries as established by the constitution, but the extent of such jurisdiction over places that have been or may be ceded to, or purchased or condemned by, the United States, is qualified by the terms of cession or the laws under which such purchase or condemnation has been or may be made."

In the case of McMahan v. Polk, 73 N.W. 77, the supreme court of South Dakota held:

A person, though not in the army or navy cannot by long and continuous residence within the boundaries of a reservation, the jurisdiction whereof is ceded to the United States, acquire

the right to vote at a state election held in the county wherein such reservation is situated."

In the case of *Concessions Co. v. Morris*, 109 Wash. 46, 186 Pac. 655, the supreme court of Washington held with reference to Camp Lewis:

A territory has been created which resembles that of the District of Columbia, the only reservation being that the state of Washington can serve civil and criminal process therein on actions arising outside the reservation."

It is, therefore, my opinion that a person cannot establish a voting residence at Fort Lincoln. He can, however, cast an absent voter's ballot at the place where he last voted unless he subsequently intended to change his legal residence.

2. Whether a state has power to tax property within a military reservation depends upon whether the power of the state to tax was reserved in ceding the land (*Cooley v. Taxation*, 4 L.ed. sec. 93). If the power to tax is not reserved then a state has no power to tax property located thereon. (*Ibid.* sec. 92).

In the case of *Surplus Trading Co. v. Cook*, 281 U.S. 647, L.ed. 1091, the supreme court of the United States held:

Private personal property located within an army camp, the lands for which were acquired by the United States with the consent of the state in which such lands are situated, cannot be subjected to state taxation in view of the provisions of article 1, section 8, Cl. 17 of the Constitution giving Congress exclusive legislative authority over places so acquired."

The only reservation contained in sec. 204 of the North Dakota Constitution relates to the service of civil and criminal process. It is, therefore, my opinion that it is not within the jurisdiction of the state of North Dakota, or of any district, to assess or tax property situated within the territorial limits of Fort Abraham Lincoln.

3. Unless a person has property subject to taxation, no personal tax can be imposed on him regardless of whether he has voted or not. If your personal property was situated within the territorial limits of Fort Abraham Lincoln as of April first in any year, such property was not taxable in that year. For, as stated above, it is my opinion that neither the State of North Dakota, nor any taxing district therein, has jurisdiction to tax any property situated within the military reservation, known as Fort Abraham Lincoln.

NELS G. JOHNSON

Attorney General