

OPINION
56-50

April 11, 1956 (OPINION)

ELECTORS

RE: Residence - Military Personnel

In your letter of March 24, 1956, an opinion is requested in reference to residence status for voting purposes of military personnel stationed in North Dakota. You state that an opinion from this office would be helpful to the various election boards in determining whether or not United States military personnel stationed in North Dakota may vote in North Dakota, where their original residences are outside the state.

The Constitution of North Dakota in Article V pertaining to elective franchise reads as follows:

"Section 125. No elector shall be deemed to have lost his residence in this state by reason of his absence on business of the United States or of this state, or in the military or naval service of the United States."

"Section 126. No soldier, seaman or marine in the Army or Navy of the United States shall be deemed a resident of this state in consequence of his being stationed therein."

In 17 Am. Jr. page 634, sec. 73, the matter of domicile as applied to soldiers and sailors is stated as follows:

"The domicile of a person is in no way affected by his enlistment or acceptance of employment in the civil, military, or naval service of his country. He does not thereby abandon or lose the domicile which he had when he entered the service or acquire one at the place where he serves. It has been pointed out that during a long period of military service one may not be viewed as occupying, in a residential sense, 'no man's land.' Accordingly, if one enters the military service and with his regiment goes beyond the limits of the state, remaining there for some time in such service, he does not become a nonresident of the state. A soldier residing at a government post on land ceded by a state to the government is not a resident of that state, although the grant by the state of the site of the post reserves the right to serve process from the courts of the state. On the other hand, if a person engaged in military service by animus and factum established a residence near but outside the military post, with the purpose of making such residence the home of himself and his wife, he may acquire a domicile in such place."

The Supreme Court of the State of Missouri in Trigg v. Trigg, 41 S.W.2d. 583 stated that a soldier may effectually change his residence as citizen if he so desires and that residence is largely a matter of intention evidenced by some act or acts in conformity

therewith.

The language of the Court is as follows:

"It must be conceded that plaintiff was a resident of California when he entered the army in 1917, and that his legal residence would be presumed to remain the same until changed. However, it is equally true that there is no inability on the part of a soldier to effectually change his residence as a citizen if he so desires. The law upon the subject is well stated in 19 C.J. 418, as follows: 'The domicile of a soldier or sailor in the military or naval service of his country generally remains unchanged, domicile being neither gained nor lost by being temporarily stationed in the line of duty at a particular place, even for a period of years. A new domicile may, however, be acquired if both the fact and the intent occur.' "

Authorities appear to be in full accord that residence is not acquired by military personnel merely by being stationed within a state for a time sufficient to meet the statutory time required of electors. In this state such provisions are found in section 16-0103 of the North Dakota Revised Code of 1943 and Section 121 of the Constitution of North Dakota. It is a general rule that a soldier or sailor does not gain a voting residence in a state by mere presence there while in the performance of his duty.

However, a serviceman may perform certain acts which signify an intention to establish a new residence such as establishing a residence near but outside the military post, with the purpose of making such residence the home of himself and his wife. The acquisition of real property and registration for voting purposes are also acts which are consistent with an intention to establish residence. This intention is to be gathered from the party's acts, declarations, and from a variety of other circumstances.

When such acts and declarations are performed we believe it is well established that residence for voting purposes can be gained providing, of course, that the party has fulfilled residence requirements of section 16-0103 of the North Dakota Revised Code of 1943 and Section 121 of the North Dakota Constitution subsequent to performing such acts and declarations as will signify an intention to establish residence.

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