

Opinion No. 255.**Elections—Residence—Civilian
Conservation Corps.**

HELD: One employed or stationed at a U. S. Civilian Conservation Corps camp may establish residence for purpose of registering and voting, depending upon intent as manifested by acts and circumstances.

September 10, 1940.

Mr. Claude A. Johnson
County Attorney
Red Lodge, Montana

Dear Mr. Johnson:

You have requested my opinion concerning the rights of Civilian Conservation Corps officers to register and vote in the general election to be held November 5, 1940.

Sub-section 3 of Section 574, R. C. M., 1935, classifies United States Civilian Conservation Corps persons in the same category with soldiers, seamen and marines in the army or navy of the United States in respect to registration and voting. Said section reads as follows:

“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 being stationed at any military or naval place within the same. No person shall be deemed to have acquired a residence in the State of Montana by reason of being employed or stationed at any United States Civilian Conservation Corps camp within the State of Montana or at any transient camp maintained for relief purposes by the government of the United States within the State of Montana.”

Section 3 of Article IX of the Constitution of the State of Montana reads as follows:

"For the purpose of voting no persons shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the state, or of the United States * * *."

The expression "shall be deemed" has been construed to mean considered, determined, adjudged (*State ex rel. Skino v. District Court et al.*, 64 Mont. 181, 186), and again referring to Section 574, sub-sections 4 and 5, indicates that the expression as used in this section of the statute should be construed to mean "considered." Sub-section 3, then, of Section 574, would read as follows:

No person shall be **considered** to have acquired a residence in the State of Montana by reason of being employed or stationed at any United States Civilian Conservation Corps camp * * *.

With this construction it is apparent from the statute that the mere fact of serving is not sufficient to give to the person residence in the state or county; that there must be other requirements to qualify him as a voter. The statute does not restrain him from becoming a voter should he be in a position to qualify as required by the Constitution and the laws of the State of Montana.

Suffrage is a political right or privilege which every free community grants to such members or class of persons as it deems fit to represent and advance the wants and interests of the whole. Each state of the Union regulates suffrage within its own limits for itself and in such a manner as the people of the state deem most conducive to their own interest and welfare.

Section 574, *supra*, in my opinion, is not intended to curtail the rights of suffrage. The purpose of the section is rather to aid in that the person serving, by reason of such service, shall not lose his right to suffrage in the state, county or precinct from which he came, unless it be his intention to so do and to acquire rights in another state, county or precinct.

The Constitution of many states contains a provision that no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the state or of the United States, but this does not mean that he cannot establish a voting residence wherever he chooses by taking proper and appropriate steps to do so, independently of the character or place of his employment. (*Darragh v. Bird*, 3 Ore. 229; *Wood v. Fitzgerald*, 3 Ore. 568; *Dennis v. State*, 17 Fla. 389.) A mere constructive residence resting upon nothing more tangible than an indefinite intention to eventually return to it is not sufficient (*Uhls v. Allard*, 69 Kan. 825, 77 Pac. 572). The intention must be evidenced by something more than a mere mental concept. It must be coupled with some outward manifestation indicative of a fixed purpose. A mere floating intention to return is not sufficient to retain domicile. (*Keenan on Residence and Domicile*, p. 143.)

In respect to federal office it has been decided that persons appointed to public office under authority of the United States, for the purpose of executing the duties of such office did not thereby, while engaged in the service of the government, lose their domicile in the place where they before resided unless they **intend** to remove there to make Washington their permanent residence. (*Atherton v. Thornton*, 8 N. H. 180; *Dallinger v. Richardson*, 176 Mass. 77, 57 N. E. 224; *Carpenter v. Carpenter*, 30 Kan. 712, 2 Pac. 122.)

It is my opinion that Section 574, R. C. M., 1933, means to tell us that a legal residence once acquired by birth or habitancy is not lost by reason of service in the Civilian Conservation Corps unless it be the intention of the person, as evidenced by manifestations aforesaid, to acquire a new residence.