

**Settlers, Right of to Vote. Vote, Right of Settlers To. Election, Right of Settlers to Vote At.**

Persons filing upon homesteads within the state of Montana prior to November 8th, 1909, with the intention of complying with the requirements of the homestead law, are entitled to vote at the general election in 1910.

Helena, Montana, October 21, 1910.

Hon. F. N. Utter,  
County Attorney,  
Fort Benton, Montana.

Dear Sir:—

I am in receipt of your favor of the 15th inst., requesting official opinion of this office upon the state of facts and questions thereunder, which are as follows:

“During the year 1909 a number of persons, then residing outside of the state of Montana, formed their intentions of coming to this state and securing homesteads under the United States homestead laws, and thereafter and prior to November 8th, 1909, filed in the proper United States land offices their applications to enter such homesteads but prior to said November 8th, 1909, did not live upon said homesteads, and that (either before or after November 8th, 1909), with full intentions of returning to this state and complying with the requirements of said homestead laws, they returned to their former places of residence outside this state for the purpose of settling up their business affairs and moving their families to this state and thereafter and subsequent to November 8th, 1909, they returned to this state and have since been living upon their said homesteads.

1. Have they resided in this state a sufficient length of time to entitle them to vote at the next general election?
2. If you adopt either of the alternatives above enclosed in brackets would your answer be different?
3. Does the filing upon a homestead coupled with the intention of making such place his residence, entitle an intending settler from another state to claim the establishment of his residence in this state under the election laws, prior to the date of his actually taking up his abode of such homestead?”

These questions have heretofore been presented to this office and an official opinion rendered thereon, which opinion was used in the brief of defendant in the case of Nat C. Carwile v. Loren T. Jones, and affirmed by the supreme court at the March term, 1909. The opinion above referred to is as follows:

“My conclusion is that persons who come into this state prior to November 3rd, 1907, with an intention to abandon a residence in some other state, and take up a residence in this state, and who upon arriving here, selected and filed upon homestead claims, declaring an intention under oath at the land office, to establish homes on said claims, and who, after closing up their business affairs in the east, returned and actually

moved upon said claims, even after November 3, 1907, but within the time required by the homestead laws, and who have continued to reside upon said claims ever since, thereby established a legal domicile in this state, prior to November 3, 1907, and if otherwise qualified, are entitled to vote in this state at the forthcoming elections to be holden November 3, 1908."

In the consideration of the case of Carwile v. Jones, it was shown that during the months of July, August and October, 1907, certain persons came to Montana from the state of Iowa. They then selected and filed on homesteads, with the intention to make this state their future home. Shortly thereafter they returned to Iowa, without having made any improvements on their homesteads, for the purpose of arranging their affairs preparatory to returning to this state. In the spring of 1908, each brought his family to Montana and settled on his respective homestead, residing there continuously thereafter. None of them voted in Iowa between the fall of 1907 and the spring of 1908. They voted at the general election held in November, 1908. The court

HELD: That having formed the intention, when filing on their homestead, to make Montana their future home, this state became and was their place of residence in the sense of that term as used in the election laws, and that their coming to this state in the summer of 1907, coupled with the selection of their new homes, constituted their "removal" from their former homes.

Carwile v. Jones, 33 Mont. 591.

You are, therefore, advised in answer to your question 1, that such persons have resided in this state a sufficient length of time to entitle them to vote at the next general election.

In reply to your second question will say that these alternatives would make no difference in the answer.

Your third question is answered by the holding of the supreme court in the case above cited.

Yours very truly,

ALBERT J. GALEN,

Attorney General.