

Electors—Election Precincts on Indian Reservation—Persons Thereon May Vote.

Election precincts may be established on reservations, either partly or wholly thereon.

Indians residing thereon who have received patents for allotments may register and vote, providing they are 21 years of age, have resided within state one year, and in county thirty days.

All persons, other than Indians, residing on reservation, citizens of the United States, who have other qualifications may vote.

Persons on reservation by reason of government employment are not entitled to vote.

July 12th, 1919.

Mr. W. J. Shannon,
County Attorney,
Cut Bank, Montana.
Dear Sir:

I have your letter of recent date enclosing copy of opinion rendered by you with reference to the establishment of election precincts on the Blackfoot Indian reservation, and with reference to the right of those persons living on such reservation to register and vote at the election to be held on September 2nd next.

While I concur in many of the statements contained in your opinion, I cannot concur in all thereof, and neither can I concur in your conclusions.

After examining your opinion and looking the matter up fully I am of the following opinion:

First. That election precincts may be established which includes territory lying wholly within the reservation, or which includes territory lying partly within and partly without the reservation.

Second. That all Indians actually residing on such reservation who have received allotments of land and patents in fee therefor, and who are of the age of twentyone years and have resided within the state for one year and within what is now Glacier County thirty days immediately preceding such election, are entitled to register and vote at such election, unless convicted of a felony and not pardoned.

Third. That all persons, other than Indians and those hereinafter referred to, actually living and residing on such reservation, who are citizens of the United States, over the age of twenty-one years, and who have resided within this state for one year, and within what is now Glacier County for thirty days preceding such election, are entitled to register and vote at such election, unless convicted of a felony and not pardoned.

Fourth. That all persons who are on such reservation by reason of the fact that they are in government employ, or are post traders, are merely on such reservation temporarily by reason of their employment or business, hence they are not residents, having gained no residence thereon, but are residents of the places where they had their habitations prior to entering such employment or business, and are not entitled to register or vote at such election.

Without going into the question at length I may state briefly the reasons for my opinion.

Section 481, Revised Codes 1907, a part of the old registration law, prescribed the rules for determining the residence of those desiring to register and vote at elections, and was first enacted as Section 4 of Senate Bill No. 57, Session Laws 1897. In Chapter 113, Session Laws 1911, such section was re-enacted without change, as Section 21 thereof; in Chapter 74, Session Laws 1913, said section was again re-enacted as Section 21 thereof, without change; and in Chapter 122, Session Laws 1915, said section was again re-enacted, as Section 24, without change. By Chapter 58, Session Laws 1919, Sec. 24 of Chapter 122, Session Laws 1915, was amended in two important particulars. Subdivision 2 of Section 24 of Chap. 122 provides that: "A person must not be held to have gained or lost a residence * * * while residing on any Indian or military reservation," but by the amendment made by Chapter 58, Session Laws 1919, the word "Indian" was eliminated. Subdivision 11 of Section 24 of Chapter 122, Session Laws 1919, provided that persons living on an Indian or military reservation should not be deemed residents of Montana, unless they had acquired a residence in some county before taking up their residence upon such Indian or military reservation, but in the amendment made to such section in 1919 the whole of subdivision 11 of Section 24 was eliminated.

Section 499, Revised Codes 1907, first appeared in our laws as Section 1245, Pol. Code 1895, and was as follows:

"No officer of this state, nor of any county, must establish a precinct within the limits of any county not fully organized, or at any Indian agency, or at any trading post in the Indian county, or on any Indian reservation."

By Chapter 115, Session Laws 1919, Section 499, Revised Codes 1907, was amended so that it now reads as follows:

"No officer of this state, nor of any county, shall establish a voting precinct within or at the premises of any Indian agency or trading post."

It will be seen that the word "voting" has been inserted in such section and that there has been eliminated therefrom the words "in the Indian county, or on any Indian reservation."

At the time Sections 481 and 499, Revised Codes 1907, were first made a part of our laws none of the Indian reservations within this state had been opened to settlement, and none of the Indians residing on such reservations had received allotments to lands thereon, and practically all persons then living on such reservations were either persons who had been adopted into Indian tribes or were employes of the government or post traders licensed by the government. However, by 1919, some of these reservations had been opened to settlement, and in some of those not opened to settlement allotments had been made to Indians many of whom had received patents in fee and sold their allotments to white citizens who had taken up their residences on such lands, and it seems clear that it was the intention of the legislature, in view of these facts, by the amendments made in 1919 to Section 122, Session Laws 1915, and Section 499, Rev. Codes, to make a radical change in the then existing laws so as to permit those Indians who had become citizens and those white citizens who had become actual residents on reservations to register and vote and to provide for the creation of election precincts on reservations for that purpose.

Persons, whether Indians or others, who have actually made their homes and resided upon an Indian reservation for one year are residents of the state, but under our laws, prior to the 1919 amendments, could not vote, even though citizens, not because they were not residents of the state, but because they resided on Indian reservations. The amendments made in 1919 simply removed these restrictions. The amendment made to Section 24, Chapter 122, Session Laws 1915, does not say that Indians receiving allotments and fee patents shall be residents after the expiration of one year from the date of patent, or after one year from the approval of the act, or that other persons residing on an Indian reservation shall be residents after one year has expired from the date of the approval of the act, but it simply removed the restriction or disqualification which had theretofore existed by reason of such residence being on an Indian reservation. For instance white persons who actually made their homes and resided on Indian reservations before the 1919 amendments were required to pay taxes on property owned by them even though situated on a reservation; if they were taxpayers, although the property which they owned was situated on a reservation, they were subject to jury duty; they might insti-

tute actions for divorce if they had resided within the state one year, although the whole year's residence was on a reservation. Whether citizens of the United States or not they were treated and considered, and in fact were residents of the state. And when these restrictions or disqualifications were removed by the 1919 amendments they still continued to be residents of the state, and if citizens of the United States, and otherwise qualified they immediately became entitled to register and vote.

On who is a foreign born and has resided in the state for a year and in a county for thirty days is entitled to register and vote just as soon as he receives his final citizenship papers, and is not required to wait for one year. Non-citizenship is a restriction or disqualification so far as registering and voting is concerned, which was removed immediately upon the approval of such amendment. And an Indian who has not received a fee patent for an allotment, and who has resided within the state for a year may not vote because he is not a citizen, but when he receives his fee patent he becomes a citizen and, if possessing the other qualifications, immediately becomes entitled to register and vote.

By the amendment made to Section 499 it seems clear that the words "voting precinct" were intended to have a different meaning than the word "precinct" as the same appeared in said section before its amendment. As it now stands with this amendment I am of the opinion that the words "voting precinct" are synonymous with the words "polling place," and that it was the intention of the legislature that no polling place should be established in any building used for agency purposes or in any building used by a post trader, but that such election does not prohibit the establishment of a polling place in the same town or village in which an agency or post trader may have been established, so long as such polling place is established in a building not used for agency or post trader purposes.

Respectfully,

S. C. FORD,

Attorney General.