

County Clerk — Election — Registration — Residence — State—Voter—Yellowstone National Park.

Persons who live within the Yellowstone National Park, but who are residents of the state by reason of the retention of their residence at some other point within the state, are entitled to register and vote in the county wherever that place of residence might be, but they could neither have their registration transferred to, nor make a new registration in, either Park or Gallatin counties.

Persons who live within the park who have no residence at some place within the State of Montana cannot vote within the state, even though they immediately establish a residence within the state.

Residence within the park, though on that territory ceded to the government by the state, is residence without the state.

Persons living within the park but who have a residence in some county in the state, who desire to register, may do so by going personally to the court house of that county, if their residence is within ten miles of it, or by registering with the precinct deputy registrar of the precinct in which they have their residence, or a notary public or justice of the peace in that precinct at the time of registration.

Vilroy C. Miller, Esq.,
County Attorney,
Livingston, Montana.
My dear Mr. Miller:

You have requested my opinion relative to the right of persons living in Yellowstone National Park to vote, the said persons claiming they are without any opportunity to vote unless they can register at Gardiner and call that their home.

That part of the Park which lies within the boundaries of Montana consists of a strip about two or three miles wide along the northern, and part of the western, boundaries of the Park. Jurisdiction over the strip of land was ceded to the United States by the State of Montana by an act of the Legislature in 1917, and which is found as Section 23 of the R. C. M. 1921, and which reads as follows:

"Exclusive jurisdiction shall be and the same is hereby ceded to the United States over all that part of territory situate in the State of Montana now embraced in the Yellowstone Park, described as follows: (then follows description); containing an area of approximately one hundred ninety-eight square miles, saving, however, to the said state the right to serve civil or criminal process within the limits of the aforesaid described lands, as long as the lands herein described are used for a national park, and no other purposes, in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed in said state, but outside the lands aforesaid; and saving, further, to the said state the right to tax persons and corporations, their franchises and property, on said lands; provided, however, that jurisdiction shall not vest until the United States, through the proper officers, notifies the Governor of the State of Montana that they assume police or military jurisdiction over said lands."

This cession is similar to many others which have been made by various states to the Federal Government for military reservations, schools, forts, arsenals, etc., with one exception, namely, the saving clause of the right to tax persons and corporations, their franchises and property on the lands ceded.

The State of New York ceded to the United States, West Point, with the reservation of the right to serve civil and criminal process. Subsequently, the question arose as to the right of residents of West Point to vote as residents of New York state, and in the case of *Re Town of Highlands*, 22 N. Y. S. 137, the Court says:

"In this case we all know that there are several acts of cession from the State of New York to the general government, reserving nothing except the right to serve process, civil and criminal, within the ceded territory, and under these authorities the territory of West Point ceased to be a part of the State of New York. The State Legislature has no authority to legislate in reference to it. * * * So, as Judge Field says, there is a uniform current of authority from the beginning of the government down to the decision of this case in 1884,—all to the effect that this territory is no part of the state. When you apply this rule to this case, it excludes all state authority whatever. These inspectors act under a state law, as the assessors do, and the judges do, under the constitution of the state. They have no right to put any person upon the registry list except qualified voters, and those qualifications are prescribed in the constitution, and they are, among others, that a man must be a resident of the state. * * * We all know that the District of Columbia was ceded by the State of Maryland to the United States, and no resident of the District votes anywhere; and of course a resident on

the West Point property occupies the same relation to the government and the State of New York as a resident of the District of Columbia does to the State of Maryland. He has no right to vote. The effect of this is to exclude from the right to vote persons who have no other qualifications as residents except a residence on the West Point property. I very readily see that there may be people there who have the right to vote in the town of Highlands, as there may be persons who have a right to vote in other parts of the state, or in other states. The constitution of this state provides that nobody gains or loses a residence by employment in the United States government, and while I mean to hold that a person resident upon West Point, and having no other qualification as a resident of the state except such as he gains from a residence on West Point, is not a resident of the state, and not qualified to vote, yet I mean to hold that the mere fact of being in the employment of the government does not destroy his right to vote, and he may vote in the place of his original residence, which existed at the time he went into employment of the government, or at his place of residence, if any, within the state, since acquired. If it was at Highland Falls, he has a right to vote there, provided he is registered in the proper district; and if in another part of the state, he has a right to vote there. * * *

This case cites the case of *Sinka v. Reese*, 19 Ohio State Reports, 306, which case involved the right of inmates of the national asylum for disabled volunteer soldiers, which was situated within an election precinct, to vote thereat. The land upon which the institution was situated was ceded to the United States by the following act of the Ohio Legislature, 64 O. L. 149:

"Section 1. That jurisdiction of the lands and their appurtenances, which may be acquired by donation or purchased by the managers of the national asylum for disabled volunteer soldiers with the State of Ohio, for the uses and purposes of said asylum, be, and is hereby, ceded to the United States of America; provided, however, that all civil and criminal process issued under the authority of the State of Ohio, or any officer thereof, may be executed on said lands and in the buildings which may be located thereon, in the same way and manner as if jurisdiction had not been ceded as aforesaid; and provided, further, that nothing in this act shall be construed to prevent the officers, employes, and inmates of said asylum, who are qualified voters of this state, from exercising the right of suffrage at all township, county, and state elections, in the township in which the said national asylum shall be located."

The second section of the act exempts all the property, real and personal, held by the Board of Managers for the uses and purposes of the asylum, from taxation assessment so long as the same shall remain the property of the United States, for the uses of the national asylum. The Court said:

"This act of the State Legislature, consenting to the establishment of the asylum within her borders, and ceding 'jurisdiction of the lands and appurtenances' of the asylum to the United States, under the operation of the clauses of the eighth section of the first article of the constitution of the United States above referred to, fixes the exclusive jurisdiction of the general government over this institution, its lands and its inmates, 'in all cases whatsoever,' except as to the execution of process issuing under state authority.

"This leads us to consider what is the legal status of persons who become residents upon the grounds, and within the limits of the institution thus within the exclusive jurisdiction of the United States; and how does it affect their claim to exercise the elective franchise in Ohio, under its constitution and laws? In passing on these questions, there is little need of speculative reasoning; for they have been in effect settled by repeated decisions of courts of high and conclusive authority. By becoming a resident inmate of the asylum, a person though up to that time he may have been a citizen and resident of Ohio, ceases to be such; he is relieved from any obligation to contribute to her revenue, and is subject to none of the burdens which she imposes upon her citizens. He becomes subject to the exclusive jurisdiction of another power, as foreign to Ohio as is the State of Indiana or Kentucky, or the District of Columbia. The constitution of Ohio requires that electors shall be residents of the state; but under the provisions of the constitution of the United States and by the consent and act of cession of the Legislature of this state, the grounds and buildings of this asylum have been detached and set off from the State of Ohio, and ceded to another government and placed under its exclusive jurisdiction for an indefinite period."

And with reference to the concluding proviso of Section 1 of the Act, above quoted, whereby it was attempted to confer upon the inmates the right to vote in the township in which the asylum was located, the Court said:

"As for the concluding proviso of the first section of the Ohio act of cession, hereinbefore quoted, and the provision substituted therefor in the first section of the act amendatory thereof (65 O. L. 208), it is unnecessary for us to consider and determine their proper construction and meaning, for the rea-

son that it is not constitutionally competent for the general assembly to confer the elective franchise upon persons whose legal status is fixed as non-residents of the state."

In the case of *Commonwealth vs. Clary*, 8 Mass. 72, the Court held that persons residing on territory ceded to the United States by the State of Massachusetts had no right to vote, and in 1 Metcalf 580 the same court held that persons residing in such territory do not thereby acquire an elective franchise as inhabitants of the towns in which such territory is situated.

From these authorities, and I find none to the contrary, it appears that residents of Yellowstone National Park, even though they reside on that part of its territory which was ceded to the general government by the State of Montana, are not residents of the State of Montana by virtue of that residence, and unless they have their legal residence at some other place which is within the State of Montana, they would not be entitled to vote in this state. The fact that our statute reserves the right to tax persons and corporations, their franchises and property on the lands within the ceded territory, in my opinion, does not change the force of the above decisions. Our constitution does not guarantee that those who pay taxes shall have the right to vote. On the other hand only those mentioned in the constitution as having the right to vote, have that right. One of the qualifications is that the voter shall be a resident of the State of Montana. If these persons living in the park have no residence at some other place within the State of Montana, they are not residents of the state, and it appears from the case of *Sinks vs. Reese*, supra, that after having ceded jurisdiction over the territory as the state did by this statute, it would be constitutionally incompetent for the Legislature to attempt to extend or reserve the right of voting to the residents of the ceded territory. If the Legislature could not do this by a direct and positive reservation of the right as expressed in the Ohio statute it cannot, of course, be contended that by reserving the right of taxation the Legislature inferentially reserved the right of the residents to vote.

There are other reasons why persons who live in the park and whose only residence is there cannot vote in Montana, even though they live in the territory that was ceded to the federal government by Montana. In order to vote in Montana an elector must be registered, the registration system being part of our laws relating to the exercise of the elective franchise. These laws provide who may register and where.

Section 555, R. C. M. 1921, states that "any elector residing within the county may register."

Section 2, Article IX, of the Constitution states the qualifications of an elector, and, so far as pertinent here, they are as follows:

1. He must be of the age of 21 years or over.
2. He shall be a citizen of the United States.

3. He shall have resided in Montana one year immediately preceding the election at which he offers to vote and in the town, county or precinct such time as may be prescribed by law.

Section 540, R. C. M. 1921, prescribes the same qualifications as to age, citizenship and residence in the State of Montana. It adds the following qualifications, being a complement of qualification No. 3, supra, contained in the Constitution:

1. He must have resided in the county thirty days immediately prior to the election at which he offers to vote.
2. His name must be registered as required by law.

Therefore, only persons who are of the age of 21 years or over, who are citizens of the United States, and who shall have resided in Montana one year and in the county thirty days immediately preceding the election at which they offer to vote, may register, and only registered electors may vote.

Persons living within the park who have no other place of residence which is within the state, cannot qualify to register under the laws of the State of Montana. This is true because they are not residents of the state and because no part of the park lies within any county of the state, and therefore the residents thereof do not live within any county of the state within which to register. A reference to Section 4320, R. C. M. 1921, defining the boundaries of Gallatin county, which bounds the park on the west, will disclose that the east boundary of said county is the west boundary line of the park, and a similar reference to Section 4337, R. C. M. 1921, defining the boundaries of Park county, which bounds the park on the north, will disclose that the south boundary of that county is the north boundary line of the park, so that the whole of that part of the park which was ceded by Montana to the United States does not lie within any county in Montana.

To entitle an elector to register he must reside within the county in which he offers to register. (Section 555.) It is apparent that these persons cannot register in either Park or Gallatin county because they are not residents within either of those counties.

If any of the persons living in the park have their residence in Park county and desire to register, they must register with the Clerk and Recorder of that county if that residence is within ten miles of the court house; if that residence be more than ten miles from the court house they must register either at the court house or with the deputy registrar of the precinct in which that residence is, or with a notary or justice of the peace of the county, who is in the precinct of that residence at the time of registration. In my opinion Section 557, R. C. M. 1921, does not permit a notary or justice of the peace to register electors of precincts wherever they may be found in the county at the time of registration, but merely gives these officers the authority to exercise their powers in any precinct in the county.

When they are in a particular precinct they have only the same power as a precinct deputy registrar which is to register the electors residing in that precinct.

Any other construction would discriminate against those persons living within ten miles of the court house, because, if they are away from their place of residence they cannot register except by personally going to the court house for that purpose. In other words, if a person living in the park maintains his legal residence at Livingston and he desires to register he is required to go to the court house there to do so, and I am of the opinion that the law does not give to a person living in the park who has his residence more than ten miles from the court house the privilege of registering, say at Gardiner before a notary public, but that he must likewise go to his place of residence for registration, or to the court house.

It is, therefore, my opinion that those persons who live within the park, but who are residents of the state by reason of the retention of their residence at some point within the state, are entitled to register and vote in the county where that place of residence might be, but they can neither have their registration transferred to, nor make a new registration in, either Park or Gallatin counties, without establishing their residence within one of those counties, and to make a change of residence would of course require a union of the act of removal with the intent to remain at the place of removal (Section 574); that those persons living within the park who have no residence at some place within the State of Montana cannot vote anywhere within the state this fall even though they should immediately establish a residence within the state, for the reason, as stated above, the court decisions seem to settle the fact that their residence within the park, even though on that territory ceded to the government by the state, is a residence without the state, and as one in order to vote must have been a resident of the state for one year, an immediate establishment of a residence within the state would not qualify the persons to vote at the coming elections.

Of course, whether or not the persons living within the park have their residence at some place within the State of Montana, is a question of fact to be determined by the rules laid down in Section 574, R. C. M. 1921.

It is further my opinion that persons living within the park but who have a residence in some county in the state, and who desire to register, must do so by going personally to the court house of that county if their residence is within ten miles of it, or by registering with the precinct deputy registrar of the precinct in which they have their residence, or a notary public or justice of the peace in that precinct at the time of registration, or by registering at the court house, if their residence is more than ten miles therefrom.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.