

No. 463

**ARMY—NAVY—MARINES—MILITARY SERVICE—  
ELECTIONS AND ELECTORS—ABSENT VOTERS**

**Held:** Montana electors serving in the armed forces of the United States are eligible to vote at the coming election by absent voter's ballot. The registry card of such an elector shall not be removed from the official register or cancelled as a result of such elector's having voted by absent ballot, if such elector complies with the provisions of Chapter 144, Laws of 1941.

August 14, 1942.

Mr. Edison W. Kent  
County Attorney  
Granite County  
Philipsburg, Montana

Dear Mr. Kent:

You have asked this office concerning the eligibility of Montana electors now in the armed forces of the United States to vote at the coming election by absent voter's ballot.

Section 3 of Article IX of the Montana Constitution provides in part:

"For the purpose of voting 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. . . ."

Section 574, Revised Codes of Montana, 1935, provides in part:

"For the purpose of registration or voting, the place of residence of any person must be governed by the following rules as far as they are applicable:

"1. That place must be considered and held to be the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

"2. A person must not be held to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, or of this state . . . nor while residing on any military reservation."

It is thus evident the framers of our Constitution and the authors of our statutes did not intend Montana electors should be deprived of their right to vote because of their absence from the state in military service. Furthermore, the Twenty-seventh Legislative Assembly in 1941 acted further to preserve the right to vote by absent ballot for electors in the active service of the armed forces of the United States. By Chapter 144, Laws of 1941, it provided:

"In the case of any elector, who by reason of his active service in the armed forces of the United States, shall vote or attempt to vote by absent voters ballot, his registry card shall not be removed from the official register or cancelled; provided that such elector shall, within thirty (30) days before or after the day of each election at which he desires to vote, furnish to the county clerk his statement setting forth that he will be or was engaged in active service in the armed forces of the United States on the day of such election, and that his residence is still within the county wherein he is registered. In addition to the foregoing facts there must appear on said statement an endorsement by a superior officer of the armed unit in which such elector serves to the effect that such elector is serving in the armed forces of the United States as of the date of such endorsement."

It would be a grave and unpardonable act to think that any Montana citizen engaged in active military service should be disfranchised, when such a person is now giving his all to preserve our state and nation and his and our privilege and right to vote. All state and county officers should do all in their power to facilitate the constitutional and legislative right of such a person to preserve his franchise.

It is therefore my opinion Montana electors serving in the armed forces of the United States are eligible to vote at the coming election by absent voter's ballot. Further, the registry card of such an elector shall not be removed from the official register or cancelled as a result of such elector's having voted by absent ballot, if such elector complies with the provisions of Chapter 144, Laws of 1941.

Sincerely yours,

R. V. BOTTOMLY  
Attorney General