

ARMED FORCES - The act of registering to vote as evidence of state residency for purpose of determining tax exemption;

ELECTIONS - The act of registering to vote by military personnel as evidence of state residency for purpose of determining tax exemption;

RESIDENCE - The act of registering to vote by military personnel as evidence of state residency for purpose of determining tax exemption;

TAXATION AND REVENUE - Application of Soldiers' and Sailors' Civil Relief Act of 1940 to tax exemptions for military personnel who reside in and register to vote in Montana;

MONTANA CODE ANNOTATED - Sections 1-1-215, 13-1-111, 13-1-112, 13-35-103, 13-35-209, 61-3-533;

OPINIONS OF THE ATTORNEY GENERAL - 38 Op. Att'y Gen. No. 22 (1979), 39 Op. Att'y Gen. No. 46 (1982);

UNITED STATES CODE - Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. § 574.

HELD: The act of registering to vote in Montana elections by military personnel may be considered as evidence that such personnel are Montana residents, and are therefore not exempt from property and income taxation under the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. §§ 501-91.

10 January 1985

J. Fred Bourdeau
Cascade County Attorney
Cascade County Courthouse
Great Falls MT 59401

Dear Mr. Bourdeau:

You have requested my opinion concerning:

Whether military personnel who are registered to vote in the State of Montana are exempt

from property and income taxation by operation of the Soldiers' and Sailors' Civil Relief Act of 1940.

The Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. §§ 501-91, hereinafter referred to as the Civil Relief Act, was enacted to protect servicemen from the burden of certain local taxes when stationed away from home. Section 574 provides in pertinent part:

For the purpose of taxation in respect of the personal property, income or gross income of any [military or naval serviceman] ... by any State ... of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within ... such State ... and personal property shall not be deemed to be located in such State Where the owner of personal property is absent from his residence or domicile solely by reason of compliance with military or naval orders, this section applies with respect to personal property, or the use thereof, within any tax jurisdiction other than such place of residence or domicile, regardless of where the owner may be serving in compliance with such orders. [Emphasis added.]

The statute was enacted to prevent the risk to servicemen of double taxation occasioned by their temporary duty in a state other than their domicile. Since the ownership of personal property may give rise to a tax obligation in both the state in which the owner resides and also in the state in which the property may be located during a given taxable year, the statute achieves its purposes by giving the serviceman an exemption from a tax imposed by a state of which he is neither a resident nor a domiciliary. See Sullivan v. United States, 395 U.S. 169, 177 (1969); United States v. County of Champaign, Ill., 525 F.2d 374, 377 (7th Cir. 1975).

By contrast, where a serviceman is considered a resident of the state where he is stationed, the provisions of the Civil Relief Act do not apply. The Act provides relief only for nonresident servicemen. See California

v. Buzard, 382 U.S. 386, 387 (1966); United States v. State of Kansas, 580 F. Supp. 512, 515 (1984). Thus, in order to determine whether a serviceman stationed in Montana is entitled to the broad immunity from the State's personal property and income taxation provided by the Civil Relief Act, it is necessary to determine whether the serviceman is a legal resident of the State of Montana. Your question concerns whether the act of registering to vote in the state is enough to establish Montana residency.

Montana law provides a set of general rules for determining place of residence. § 1-1-215, MCA. Section 1-1-215(1), MCA, provides that one's residence is "the place where one remains when not called elsewhere for labor or other special or temporary purpose and to which he returns in seasons of repose." Under section 13-1-111(1)(c), MCA, a person must be a resident of the State of Montana and of the county in which he offers to vote for at least 30 days. Additional rules exist for determining residence in cases involving registration or voting. § 13-1-112, MCA. The relevant portions of section 13-1-112, MCA, state:

(1) The residence of an individual is where his habitation is fixed and to which, whenever he is absent, he has the intention of returning.

....

(3) An individual in the armed forces of the United States may not become a resident solely as a result of being stationed at a military facility in the state. An individual may not acquire a residence solely as a result of being employed or stationed at a training or other transient camp maintained by the United States within the state.

(4) An individual does not lose his residence if he goes into another state or other district of this state for temporary purposes with the intention of returning unless he exercises the election franchise in the other state or district.

....

(7) The place where an individual's family resides is presumed to be that individual's place of residence. However, an individual who takes up or continues a residence at a place other than where his family resides with the intention of remaining is a resident of the place where he resides.

It is evident from the above-quoted statutes, as well as from the language of sections 1-1-215(6) and 13-1-112(8), MCA, that residence depends upon a union of act and intent. See 38 Op. Att'y Gen. No. 22 at 79 (1979). Intent is a state of mind which may be evaluated through the circumstantial evidence of a person's manifested conduct. Such circumstances include where a person exercises his political rights. District of Columbia v. Murphy, 314 U.S. 441, 456 (1941); United States v. Scott, 472 F. Supp. 1073, 1079 (D.C. Ill. 1979), affirmed, 618 F.2d 109 (7th Cir.), cert. denied, 445 U.S. 962 (1980). Since Montana law requires that a voter make his residence in a particular county within the State of Montana, the act of registering to vote is certainly persuasive evidence that the person is a Montana resident. It is not, however, conclusive evidence. There may be situations where one registers to vote in a state, although not qualified as a resident to do so. See, for example, District of Columbia v. Murphy, 314 U.S. 441, 456 (1941) (whether or not one votes where he claims domicile is highly relevant on the question of domicile but not conclusive); Woodroffe v. Village of Park Forest, 107 F. Supp. 906, 911 (N.D. Ill. 1952) (a soldier who did not qualify as a resident of Illinois, but who had nevertheless voted in an Illinois school board election, could not claim the illegal act of voting as a basis for acquisition of residence in Illinois).

The act of registering to vote in the State of Montana, then, is not conclusive proof that a member of the military service is a Montana resident, just as failure to register to vote in Montana would not be conclusive proof that a serviceman is a nonresident. However, because Montana's election law requires that a person be a resident of the state before voting in the state's elections, the act of registering to vote may be used as evidence that a serviceman is a Montana resident. Thus,

a serviceman who has registered to vote in Montana (thereby claiming to be a Montana resident) may not claim exemption from state property and income taxation under the Soldiers' and Sailors' Civil Relief Act without offering convincing evidence that he is in fact not a resident after all. To claim that he is in fact not a resident after having registered to vote in the state would subject him to prosecution for the misdemeanor of fraudulent registration. See §§ 13-35-103, 13-35-209, MCA.

This opinion is not inconsistent with 39 Op. Att'y Gen. No. 46 (1982), which held that military personnel serving on active duty on a military installation in Montana are exempt from the motor vehicle fees imposed by section 61-3-533, MCA. That opinion addressed the general application of § 574 of the Civil Relief Act, and the distinction between resident and nonresident servicemen was not an issue. The cases relied upon, however, in 39 Op. Att'y Gen. No. 46 (1982) support the conclusion that servicemen who are residents of the taxing state are not protected by the Civil Relief Act.

THEREFORE, IT IS MY OPINION:

The act of registering to vote in Montana elections by military personnel may be considered as evidence that such personnel are Montana residents, and are therefore not exempt from property and income taxation under the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. §§ 501-91.

Very truly yours,

MIKE GREELY
Attorney General