

ELECTIONS:

Members of United States Conservation corps
can not vote in city election.

✓ Doc 7139-7201-10178 - PS May 1929

September 5, 1933. ✓



Hon. R. Wilson Barrow,
Prosecuting Attorney,
Macon, Missouri.

Dear Mr. Barrow:

This department acknowledges receipt of your letter of August 26 wherein you request an opinion as to whether or not members of a certain U.S. Civilian Conservation Corps are qualified to vote in a special election to fill a vacancy in the office of Mayor to be held on September 12, 1933. We quote your letter in full as follows:

"Request has been made to me by certain city councilmen of Macon, Mo., for an opinion from your office upon the following question: Whether the members of the U.S. Civilian Conservation Corps No. E.65, Macon, Mo. would be qualified voters at the special city election to fill the vacancy in the office of mayor, to be held in Macon, Mo. on September 12, 1933.

All of these erosion workers, consisting of about 240 men, are residents of the State of Missouri and many have families residing principally in Kansas City, St. Louis, Chillicothe, etc. However, some of these men are claiming that they have resided here in Macon County for sixty days and that this is their home.

I have advised the officials here as well as representatives of these government workers that they would not be legally entitled to vote at this special city election, as they are not in fact residents of Macon and are government workers whose home is considered their place of enlistment, etc.

If your Department can assist us with an opinion on this matter, it will be greatly appreciated."

We assume that these men are claiming their right to vote under Sec. 7139 R.S. Mo. 1929, which is as follows:

"All male persons, of the age of twenty-one years, residing within the limits of any incorporated town or city, and who shall have resided within the same for sixty days next preceding an election, if otherwise qualified by the Constitution and laws of this state, shall be entitled to vote at all elections of town officers; and no property qualification shall be required by any person to render him eligible to any office in any city or incorporated town."

Under Sec. 7201, R.S. Mo. 1929, the section "applicable to all towns and cities", the section quoted above is made applicable to a city election in Macon, said section being as follows:

"The provisions of section 7139 shall be applicable to all towns incorporated under article 7, and to all towns and cities incorporated in any other manner."

Because they are twenty-one years of age and have resided in Macon for sixty days, and might be further qualified under Sec. 10178, R.S. Mo. 1929, the pertinent part of which is

"First, he shall have resided in the state one year immediately preceding the election at which he offers to vote",

they now offer themselves as qualified voters. Under Art. VIII, Sec. 7 of the Constitution of the State of Missouri, which is as follows:

"For the purpose of voting, no person shall be deemed to have gained a residence by reason of his presence, or lost it by reason of his absence, while employed in the service either civil, or military, of this state, or of the United States; nor while engaged

in the navigation of the waters of the State, or of the United States, or of the high seas, nor while a student of any institution of learning, nor while kept in a poor-house or other asylum at public expense, nor while confined in public prison,"

we find that these voters do not lose their residence by reason of civil service of the United States. Neither do they gain a residence by reason of civil service. We therefore class them as transient and temporary members in the service, same being civil in its nature. In the case of *In Re Lankford Estate*, 272 Mo., l.c. 9, the Court said:

"Residence is largely a matter of intention. **** This intention is to be deduced from the acts and utterances of the person whose residence is in issue. *****"

At first glance these men might claim that they intended to make Macon their home, but you state in your letter that they have families residing in other parts of the state, and no doubt many of them are outside the city limits or are dwelling in temporary camps and tents--in fact, regardless of what they might say, their acts, character of work, and the situation surrounding their employment would refute any utterances to the contrary. In the case of *Lankford v. Gebhart*, 130 Mo., l.c. 633, the Supreme Court has said:

"So, this court has held that physical stay or residence in a particular place will not of itself constitute a domicile. The physical act of staying must be accompanied with the mental determination of making a home or domicile in the place where the party stays or abides."

The men in question are physically in Macon, but do they have the mental determination of making a home in Macon? We think not. Knowing the conditions surrounding the employment of the men and they themselves knowing that there is a possibility of their being transferred, and that the work is of a temporary nature and that should their stay in Macon become permanent, they would doubtless have to resign from the service or position they now hold, they are in a similar position to the student who attends college in a town and undertakes to cast a vote at an election. However, the student is in reality in a better position to claim residence, as it is reasonable to assume that he will reside in the city for nine months, while the government employees, we dare say, do not know from one day until the next whether they will be living in Macon.

In the case of *Goben v. Murrell*, 195 Mo. App., l.c. 108-110, the Court said:

"In this view of the law, has the contestant, through the agreed statement, clearly shown that the students who voted for the contestee were not legal voters? We think he has. He has shown by that statement that they left their places of residence and 'came to Kirksville for the sole purpose of becoming students at the American School of Osteopathy, an institution of learning located at said city, with the intention of remaining in said school three years and of then locating at places elsewhere for the practice of osteopathy..... And that said persons have never altered their intentions of leaving the city of Kirksville as soon as their course of study at said school shall have been completed.' That is to say, they came to Kirksville not to reside, as that word is understood in its application to the qualification of voters, but for a temporary purpose, which, when accomplished, was to end their presence there. Residence must have some connection or identification with the community. One's stay should at least be indefinite and not, as shown here, for the mere temporary purpose of attending school and then immediately leaving to locate in a permanent home elsewhere.

Fry's Election Case, 71 Pa. St. 302, is much like this. The discussion is able and interesting. It was there said (italics the court's) that 'The stated case expressly declares that the students referred to in it, came to Allentown from other counties, for no other purpose than to receive a collegiate education, but intended to leave after graduating. It is evident that the college was not their true and permanent home; their stay there was not to be indefinite, as the place of a fixed abode, until future circumstances should induce them to remove. Their purpose was definite and temporary, and when accomplished they intended to leave. They retained their original domicile, for the facts stated show that they never lost it. On this point the authorities are in entire accord.' Continuing (p. 311), the court further said: 'Having, as the case states, come to Allentown for no other purpose than to receive a collegiate education, and intending to leave after graduating, they have not lost their home domicile, and could vote there on returning to it though they should not reenter their father's house.'

Another instructive case is *Sanders v. Getchell*, 76 Maine 158, 165. In the course of discussion of the law as applicable to students, the Court said: 'It is clear enough that residing in a place merely as a student does not confer the franchise. Still a student may obtain a voting residence, if other conditions exist sufficient to create it. Bodily presence in a place, coupled with an intention to make such place a home, will establish a domicile or residence. But the intention to remain only so long as a student, or only because a student, is not sufficient. The intention must be, to make the place a home temporarily, not a mere student's home, a home while a student, but to make an actual, real, permanent home there; such a real and permanent home there as he might have elsewhere. The intention must not be conditioned upon or limited to the duration of the academical course. To constitute a permanent residence, the intention must be to remain for an indefinite period, regardless of the length of time the student expects to remain at the college. He gets no residence because a student, but being a student does not prevent his getting a residence otherwise.' And the same view is taken in *Vanderpol v. O'Hanlon*, 53 Iowa, 246.

Under our election law a student neither loses his old residence nor gains a new one during his absence from the former, or presence at the latter. It is true that this law does not preclude his becoming a resident and voter at the school town or city, but his intention must be evidenced by something more than his mere physical stay in the place. He must not intend to make it his home--not that he shall remain for life there, but his home indefinitely. And so, if he comes into the place for the temporary purpose of getting an education and then to leave for other parts, he has not such a residence as entitles him to vote. (Matter of Garvey, 147 N.Y. 117)

The same kind of residence (except in some cases as to length of time) necessary to make a legal voter will qualify a person to hold office. Would one suppose that mere students are eligible to the offices at the locality of the school? There are municipalities in which schools are located, where the students outnumber the citizens proper. It certainly would strike one as extraordinary to learn that it was in the power of these non-taxpaying sojourners to wrest the city or county government from the voice and hand

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of the permanent citizens!"

In view of the foregoing authorities, it is the opinion of this department that the 240 men who are employees of the U.S. Civilian Conservation Corps E-65 should not have the right to vote in the special election to be held on September 12, 1933.

Respectfully submitted,

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APPROVED:

ROY McKITTRICK,
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