

ELECTIONS: Members of Federal Transient Camps are entitled to vote in the general election providing they possess the other necessary qualifications.

*See 10178 R.S. Mo. 1929
11-1*

October 31, 1934.

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Hon. James P. Aylward, Chairman,
Democratic State Committee,
Madison Hotel,
Jefferson City, Missouri.

Dear Sir:

This department is in receipt of a request for an opinion from Mr. R.E. Holliday regarding the following inquiry which you received from Mr. Charles W. Dickey, Chairman of the Greene County Democratic Central Committee:

"We have a Federal Transient Camp in Greene County with about two hundred men in it. A great many of these men live outside of the State of Missouri, but a number of them live in Missouri and some are inhabitants of Greene County.

Please advise us whether or not these transients can vote. Of course, the ones who do not reside in Missouri and have not resided here for one year would not be entitled to vote, but does the fact that they are in transient camps prohibit them from voting when they are residents of Missouri and of Greene County?"

The general qualifications of an elector in the State of Missouri are set forth in Section 10178, R.S. Mo. 1929, which provides:

"Every male citizen of the United States and every male person of foreign birth who may have declared his intention to become a citizen of the United States according to law, not less than one year nor more than five years before he offers to vote, who is over the age of twenty-one

years, possessing the following qualifications, shall be entitled to vote at all elections by the people: First, he shall have resided in the state one year immediately preceding the election at which he offers to vote; second, he shall have resided in the county, city, or town where he shall offer to vote at least sixty days immediately preceding the election; and each voter shall vote only in the township in which he resides, or if in a town or city, then in the election district therein in which he resides: Provided, however, that no officer, soldier or marine in the regular army or navy of the United States, shall be entitled to vote at any election in this state; and provided further, that no person while kept at any poorhouse or other asylum at public expense, except the soldiers' home at St. James and the confederate home at Higginsville, nor while confined in any public prison, shall be entitled to vote at any election under the laws of this state; nor shall any person convicted of felony or other infamous crime, or of a misdemeanor connected with the exercise of the right of suffrage, be permitted to vote at any election unless he shall have been granted a full pardon; and after a second conviction of felony or other infamous crime, or of a misdemeanor connected with the exercise of the right of suffrage, he shall be forever excluded from voting."

The phrase in the above section with which we are concerned is "that no person while kept at any poorhouse or other asylum at public expense **** shall be entitled to vote at any election under the laws of this state". As to whether or not the various transient camps maintained by the Federal Government in the State of Missouri are "asylums at public expense" or "poorhouses" would depend largely on the facts. As we understand the facts to be, the members of these transient camps are more or less homeless and are given employment, receiving compensation in the nature of clothes, sustenance and approximately \$1.00 per week. They may be paid out of public funds, but the matter resolves itself into the men working and receiving compensation therefor. We are therefore of the opinion that these men are not disqualified from voting and do not come within the purview and intention of the Legislature in disqualifying certain persons from voting.

Of course, these men individually must possess the necessary qualifications to vote, i.e., they must reside one year immediately preceding the election in the State of Missouri and must reside in the county, city or town in which they offer to vote for 60 days preceding the election. We are therefore of the opinion that only such members of the transient camps as are citizens of the State of Missouri and possess the residential qualifications could participate in the coming election.

Conceding that there are many members of these camps who are residents of Missouri, we are confronted with the question of whether or not Greene County is their place of residence. It has been repeatedly held in this state that residence is largely a matter of intention, as was said in the case of *In Re Lankford Estate*, 272 Mo., l.c. 9-11:

"Residence is largely a matter of intention. (*Lankford v. Gebhart*, 130 Mo. 621). This intention is to be deduced from the acts and utterances of the person whose residence is in issue. Here by a most solemn written admission made in the very will by which the property was devised to defendants, decedent said that his residence on the 12th day of April, 1912, was at 'Marshall, Saline County, Missouri', and that his former residence had been 'Pueblo, County of Pueblo and State of Colorado;' which admission plainly indicated both an abandonment of a former or old residence and the acquisition of a new one. (*Johnson v. Smith*, 43 Mo. 499). There is not a scintilla of proof that decedent ever had a residence in but two states. He was born in Missouri. He went to Colorado, remained there about thirty years, and then in April, 1912, before his death in the December following, came back to Saline County, Missouri, where his relatives live, made his will, thereafter visited divers places where he had financial interests, till September, 1912, when he came back to Saline County, and there remained at the house of his niece till he suddenly died in December, 1912.

The only contention that is made whereon is bottomed any conflict in the evidence which would serve to make applicable here the rule of reliance upon the lower court's finding, is upon decedent's statement to his nephew Walker that he (decedent) 'had to vote in Missouri'. Clearly this is no contradiction,

for manifestly decedent had never had a domicile in Missouri since he left it thirty years before, until he came back and made his will in April, 1912. He could not vote in November, 1912, for the very simple reason that he had not been domiciled in Missouri for one whole year. So he could truthfully have made the statement attributed to him and yet have been at his death a resident and even a citizen of Missouri. In short, the statement made to the witness Walker by decedent proves nothing, and since the solemn admission made in writing made out a prima facie case for plaintiff, the judgment should have been for plaintiff, unless some evidence came in on the part of defendants which was contradictory to it. A reference to all of the evidence offered by defendants, which in fairness we set forth in the statement, discloses that nothing whatever was offered by defendants to disprove the prima facie case so made out by decedent's solemn written admission contained in his will.

* * * *

It has been held here, in conformity with the rule elsewhere, that there is often a distinction between the word 'residence', which is used in the applicatory statute (Sec. 309, R.S. 1909), and the word 'domicile'. (cases cited) If this distinction should, mayhap, exist in this case it would open up an interesting question, which we do not find it necessary to pass on here."

CONCLUSION

It is the opinion of this department that residents or citizens of Missouri who are members of Federal Transient Camps are entitled to vote in the coming election providing they possess the necessary qualifications and intend to make the county or precinct in which the camp exists their residence.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

ROY MCKITTRICK,
Attorney General