

VOTING: Members of Veterans Administration department of Federal Government are entitled to vote in Missouri.

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August 1, 1934.



Mr. Allen M. Thompson  
Secretary to the Governor  
Executive Office  
Jefferson City, Missouri

Dear Mr. Thompson:

Your letter of July 26, 1934, requesting an opinion of this office is as follows:

"I wish you would give me an opinion on the enclosed letter at your earliest convenience.

Thanking you in advance for your information, I am,"

The letter attached to your request from L. M. Wilson is as follows:

"In the case of me and my wife we are both native Missourians, and have maintained legal residence in the state all our lives, and lived in the City of Excelsior Springs, Mo., from January 1, 1931 to April 30, 1931, before moving on the reservation, and would like to be advised by the Attorney General if this does not give us right and entitle us to vote in this county. My former residence was Braymer, Missouri and my wifes Poplar Bluff, Missouri.

Also in regards to the other employees who have lived on the reservation for twelve months are they not also entitled to a vote, I understand that there has been a decision rendered in another state in which the opinion was that employees living on reservation were not entitled to vote other than and absentee ballot, but in this state when the legislature ceded this property to the government, it reserved certain rights, and inasmuch as it did, and inasmuch as all employees here purchase

Missouri Automobile licenses, and have been advised that they must purchase automobile licenses in the state, does that qualify them as residents of the state. \* \* \* \*

Section 2 of Article VIII of the Missouri Constitution is as follows:

"All citizens of the United States, including occupants of soldiers' and sailor's homes, over the age of twenty-one years who have resided in this state one year, and in the county, city or town sixty days immediately preceding the election at which they offer to vote, and no other person, shall be entitled to vote at all elections by the people; provided, no idiot, no insane person and no person while kept in any poor-house at public expense or while confined in any public prison shall be entitled to vote, and persons convicted of felony, or crime connected with the exercise of the right of suffrage may be excluded by law from the right of voting."

Section 10178 R. S. Mo. 1929, provides as follows:

"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 Higginville, 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."

There is nothing specifically contained in the Missouri Constitution or statutes prohibiting members of the Veterans Administration of the Federal Government, who happen to be located in Missouri from voting and hence when they can qualify under the above general provision of law, they are electors in this state, with the privilege of franchise in the coming primary and general elections.

The only question which bothers the prospective voter, in your query, is his question as to necessary residence in Missouri under the Constitution and statutes above set out.

Residence is a necessary requisite before voting in this State. The duties of one attached to the Veterans Administration located in Missouri, does not disfranchise one as a voting citizen in this state. Where an elector so employed has resided in this state for one year and in the county, city or town 60 days immediately preceding the election to which he offers to vote, he should be considered and qualified as an elector when presenting himself to the polls for the purpose of voting.

This question may present itself: Is the personnel of the Veterans Administration, made up only of temporary residents of this State, at all events not entitled to vote in Missouri, because of non-permanency of their occupation and quarters?

The fact that Administrative quarters may be moved at pleasure does not mean that the residence of the personnel is determined by the location of personnel quarters. The personnel does not suffer the loss of any civil rights simply because they happen to work for a department of the Federal Government known as the Veterans Administration.

Section 650 R. S. Mo. 1929 provides in part as follows and defines residence in Missouri, when the word is used in the Constitution or statutes, thus:

" \* \* \* ;seventeenth, the place where the family of any person shall permanently reside in this state, and the place where any person having no family shall generally lodge, shall be deemed the place of residence of such person or persons respectively;" \* \* \* "

In the case of Green v. Beckwith, 38 Mo. 384, l. c. 387, our Supreme Court said:

"A man's residence, like his domicile, or usual place of abode, means his home, to and from which he goes and returns, daily, weekly, or habitually, from his ordinary avocations and business, wherever carried on."

In the case of State ex rel. v. Smith, 64 App. 313, l. c. 319, the Court said:

"The term 'residence' has no fixed meaning applicable alike to all cases, it must be understood differently, according to a number of varied conditions. In some instances it is regarded as synonymous with 'domicile,' but they are not, in all cases, to be treated as convertible terms. It is said that domicile is residence combined with intention. It has been well defined to be residence at a particular place, accompanied with positive or presumptive proof of an intention to remain there for an unlimited time. A man can have but one domicile, for one and the same purpose, at any one time, though he may have numerous places of residence. His place of business may be, and most generally is, his place of domicile, but it obviously is

not by any means necessarily so, for no length of residence, without the intention of remaining, will constitute domicile."

Judge Cooley in his Constitutional Limitations, Volume 8, pages 1365 to 1367 said:

"A person's residence is the place of his domicile, or the place where his habitation is fixed without any present intention of removing therefrom. The words ('inhabitant', 'citizen,' and 'resident', as employed in different constitutions to define the qualifications of electors, means substantially the same thing; and one is an inhabitant, resident, or citizen at the place where he has his domicile or home. Every person at all times must be considered as having a domicile somewhere, and that which he has acquired at one place is considered as continuing until another is acquired at a different place. One's residence is where he has an established home; the place where he is habitually present, and to which, when he departs, he intends to return. The fact that he may at a future time intend to remove will not necessarily defeat his residence before he actually does remove. It has been held that a student in an institution of learning, who has residence there for the purpose of instruction, may vote at such place provided he is emancipated from his father's family and for the time has no home elsewhere." \* \* \* "Temporary absence from one's home, with continuous intention to return will not deprive one of his residence, even though it extend through a series of years."

#### CONCLUSION.

It is the opinion of this office that one employed with the Veterans Administration in Missouri, as far as residence is concerned, may be a qualified voter. The nature of his job is not conclusive evidence of temporary residence in this state. His residence for the purpose of voting is largely a matter of intention on the part of the elector and is determined by overt acts and declarations of the elector. Once the elector has fixed his habitation for the required length of time within the State, county and City where he offers himself to vote, showing no present

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intention of moving, then he is a qualified voter of a resident ballot unless he declares his residence to be otherwise, to the judges of election. His declarations of intended residence is to be considered with great weight, when qualifying him as a resident voter.

Those electors who have always been a resident of this State but have shown no intention of being but temporary residents of the county, where they offer to vote, may vote an absentee ballot at the polls within this state on election day, said ballot to be voted and transmitted as the absentee ballot of any other qualified voter.

Respectfully submitted,

WM. ORR SAWYERS,  
Assistant Attorney General

APPROVED:

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ROY MCKITTRICK  
Attorney General.

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