

SOLDIERS AND SAILORS: Can vote in St. Louis County if they can establish a legal residence, independent of the fact that they are soldiers and sailors in the regular United States Army and Navy.

October 27, 1936

Honorable Owen G. Jackson, Chairman
Board of Election Commissioners
Clayton, Missouri



Dear Mr. Jackson:

This Department is in receipt of your letter of October 16, and your question briefly is,

"Can soldiers and sailors vote in the coming election in St. Louis County?"

We are grateful to you for your suggestions and for pointing out the sections which relate to the same.

In 1921, Laws of Missouri 1921 page 710, by popular vote the following proposition was submitted to the people:

"Soldiers' Votes; Absent account of Military Service.

That section 11, of article 8, Constitution of Missouri is hereby repealed and a new section adopted in lieu thereof:

The legislature shall, by general law, make provision enabling qualified electors of this state, absent from the state on account of military service, to vote at general and special elections."

In 1924, Section 8 of Article VII of the Constitution was adopted, which reads:

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"Qualified electors absent from the state on military or naval service shall, and qualified electors absent from their counties but within the state may, be enabled by law to vote at general or special elections."

Pursuant to the provisions of Section 9 the legislature has enacted absentee ballot voting in Missouri. The present law dealing with the same, amended slightly in 1935, is laws of Missouri 1933 pages 219 to 225, inclusive. The present situation with soldiers and sailors appears to be there is no constitutional prohibition against them voting, irrespective of the provisions of Section 10178, Revised Statutes Missouri 1929.

Referring to the new laws relating to St. Louis County, passed by the legislature in 1935, page 230, Section 2, dealing with the qualifications for voting, is as follows:

"Every citizen of the United States who is over the age of twenty-one years, or who will reach the age of twenty-one years on or before the day of the next election, including primary elections, following the registration and who will have resided in this state one year next preceding the first election held after the registration and during the last sixty days of the time shall have resided in the county where such election is held, who has not been convicted of bribery, perjury, or other infamous crime, or of a misdemeanor connected with the exercise of the right of suffrage, who is not kept at any poorhouse or other asylum at public expense, except the soldier's (soldiers') home at St. James and the confederate home at Higginsville, who is not confined in any public prison or jail and who is not otherwise disqualified as a voter at said election, by the provisions of the Constitution and the laws of the

state of Missouri, shall be entitled to register and vote at such primary election, or elections, for all officers, state, county or city made elective by the people, or at other elections held in pursuance of the laws of the state, but shall not vote elsewhere than in the precinct where his or her name is registered, and whereof he or she is registered as a voter."

We think the above section controls the qualifications for voting in St. Louis County, instead of Section 10178. Therefore, each voter must possess the qualifications as set forth in the above section. There is no provision in the above section which prohibits or grants the right to soldiers and sailors in the military service to vote, but we are confronted with the provisions of Section 7 of Article VIII of the Constitution 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."

There has never been any construction or interpretation made by our courts as to soldiers and sailors voting. However, we think the decision in the case of *Goben v. Murrell* 195 Mo. App. 1. c. 109, is applicable to soldiers and sailors, in principle:

"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 intend to make it his home - not that he shall remain for life - 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 entitled 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 nontaxpaying sojourners to wrest the city or county government from the voice and hand of the permanent citizens."

CONCLUSION

We are of the opinion that the soldiers of the United States Army of Jefferson Barracks will have to present more evidence than the mere fact that they are residing physically in St. Louis County. We do not believe that Section 7 of Article VIII expressly prohibits soldiers and sailors from voting, but, as stated in the *Goben v. Murrell* case, *supra*, the soldier's intention must be

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evidenced by something more than his mere physical stay in the place; he must intend to make it his home, not necessarily for life, but indefinitely. In the last analysis, it devolves upon the judges of election to determine whether the soldiers are qualified from their utterances, as is stated in the case of *In re Lankford Estate* 272 Mo. 1.

We therefore rule, bearing in mind what we have said above, that the soldiers and sailors are not precluded in St. Louis County from voting due to the fact that they are soldiers and sailors, but they have the additional burden of proving that they are bona fide residents of the county, independent of the fact that they are soldiers and sailors.

Of course, soldiers and sailors who were legal residents of St. Louis County before entering the Army cannot be questioned; and soldiers and sailors from the State who possessed residential qualifications in the State of Missouri before entering the Army, can cast absentee ballots in the State of Missouri.

Respectfully submitted,

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APPROVED:

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