

ELECTIONS: Qualified voter does not lose residence by joining the Navy unless the intention shows otherwise.

October 11, 1938



Board of Election Commissioners
City of St. Louis
208 S. 12th Boulevard
St. Louis, Missouri

Gentlemen:

This is to acknowledge receipt of your letter of October 3, 1938, requesting an official opinion from this department, which is as follows:

"The Board would like your opinion on the following case:

"One Edward John Jones, aged twenty-four years, whose parents, so he states, have lived at 3838 South Broadway for the past sixty-five years, made application today to register. Mr. Jones states he entered the Navy in the Bureau of Medicine Surgery when he was sixteen years of age, with his parents' consent, and was discharged five months ago, returning to the home of his parents. He also stated he has never before made application to register.

"We at first were inclined to pass him because of the Constitutional provision (Article 8, Section 7), but this seems to apply to voting only and presupposes one having been registered. In the affidavit of registration however, he would be asked to swear that he has resided in the State of Missouri one year (Section 16, New Permanent Registration Law)."

Article VIII, Section 7, of the Missouri Constitution reads 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."

Section 12, Session Laws of 1937, page 244, sets out the qualifications of voters in cities of the population of 600,000 or more, which applies to the City of St. Louis. This section reads as follows:

"Every citizen of the United States, including occupants of soldiers' and sailors' homes, who is over the age of twenty-one years, who has resided in the State one year immediately preceding the election at which he offers to vote, and during the last sixty days of that time shall have resided in the city where such election is held, shall be entitled to vote at all elections by the people, if properly registered, unless he comes within the following exceptions:

- (1) If he is an idiot or insane person.
- (2) If he has been convicted of a felony, or of a crime connected with the exercise of the right of suffrage and has not been granted a full pardon therefor.
- (3) If he is confined to any public prison.
- (4) If he is kept at any poor house at public expense.
- (5) If he has been convicted a second time of a felony, or of a crime connected with the exercise of the right of suffrage."

A voter does not lose his residence by being away temporarily either to an institution or as a member of the Navy. As in all election laws, the intention of the voter must be determined. Under the state laws, a member of the Navy is not entitled to vote, but at the same time he does not lose his residence by reason of becoming a member of the Navy.

In the case of *Goben v. Murrell*, 190 S. W. 986, 1. c. 987, the court said:

"Now in this case the students, having been allowed to vote by the election officers, are presumed to be legal voters. *Gass v. Evans*, 244 Mo. 329, 344, 149 S. W. 628. It is not enough to destroy such presumption to show that the voter was a student going to school in the city where he voted (*Gumm v. Hubbard*, 97 Mo. 311, 320, 11 S. W. 61, 10 Am. St. Rep. 312), for the fact that one goes into a city only for the purpose of going to school does not conclude the question whether he is a legal voter. He may intend to reside at such place. It is a question of intention, not, however, determined conclusively by his testimony. *Hall v. Schoenecke*, 128 Mo. 661, 31 S. W. 97; *Seibold v. Wahl* (Wis.) 159 N. W. 546. The onus of showing that he was not a qualified voter is on the contestant. *South Mo. Land Co. v. Combs*, 53 Mo. App. 298; *State, to Use, v. Hudson*, 86 Mo. App. 501, 510; *Gilliland v. Railroad*, 19 Mo. App. 411, 419; *Appleman v. Sporting Goods Co.*, 64 Mo. App. 71.

"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."

Also in Fry's Election Case, 71 Pa. 302, 310, 10 Am. Rep. 698, the court said:

"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 indefinite (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."

In the case of Chomeau v. Roth, 72 S. W. (2d) 996, 1. c. 999, the court said:

"The fact that the challenged voters were students is in and of itself not at all decisive of the case. Our Missouri Constitution provides in article 8, section 7 (Const. art. 8, sec. 7, p. 677, Mo. St. Ann.), that for the purpose of voting, no person shall be deemed to have gained a residence by reason of his presence, or to have lost it by reason of his absence, while a student of any institution of learning. So the Constitution leaves the student much as it finds him, permitting him either to retain his original residence for voting purposes, or to take up a residence wherever his school is located if he so elects. In other words, mere physical presence at the school is not enough either to gain for him a voting residence at the school, or to cause him to lose his existing voting residence at his home; the whole question, as in all similar situations, being largely one of intention, to be determined not alone from the evidence of the party himself, but in the light of all the facts and circumstances of the case. Hall v. Schoenecke, 128 Mo. 661, 31 S. W. 97; Goben v. Murrell, 195 Mo. App. 104, 190 S. W. 986, 197 S. W. 432.

"The two cited cases, and particularly the former, control this case in all essential respects. As they announce the law, it is entirely possible for a student to gain a residence at the place where he is attending school, although he may have gone there for no other purpose than to attend school; the question of whether a change of residence is effected depending upon the intention with which the removal from the former residence was made. A temporary removal for the sole purpose of attending school, without any intention of abandoning his usual residence, and with the fixed intention of returning thereto when his purpose has been accomplished,

will not constitute such a change of residence as to entitle the student to vote at his temporary abode. But conversely, an actual residence, coupled with the intention to remain either permanently or for an indefinite time, without any fixed or certain purpose to return to the former place of abode, is sufficient to work a change of domicile. *Nolker v. Nolker* (Mo. Sup.) 257 S. W. 798; *Finley v. Finley* (Mo. App.) 6 S.W.(2d) 1006.

* * * * *

"And in this view of the case, not only had the particular students abandoned their former residences upon entering the seminary, as there was evidence to disclose, but they presented themselves as voters at the proper precinct in the city of Clayton, declaring to the election officials in charge thereof that they regarded the seminary as their place of residence. We grant that such statements on their part were not conclusive upon the question of their intention, but the evidence thereof, together with the other matters we have heretofore dwelt upon as significant, amply warranted the trial court in finding, as it did, that they were qualified to vote. If, as is said in *Goben v. Murrell*, supra, residence for voting purposes must have some connection or identification with the community, such connection or identification could not better be evidenced than by a participation in the community's public affairs by those who claim no other community as their residence."

CONCLUSION

In view of the foregoing, it is the opinion of this department that Edward John Jones did not lose his residence in the City of St. Louis by joining the Navy for the reason that it would have been impossible for him to declare his

intention of being a voter in another city or state, as in most states members of the Navy are prohibited from voting. It is also the opinion of this department that at no time did Edward John Jones abandon his home with the intention of not returning to the City of St. Louis, and for that reason, although a member of the Navy, his residence should be considered as in St. Louis and he should be entitled to register and vote.

Respectfully submitted,

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APPROVED:

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(Acting) Attorney General

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