

ELECTIONS: : Absence from State on military service
: is not itself a change of residence
: as would bar candidacy for public office.

May 24, 1944

Honorable J. C. McDowell
Judge of the Circuit Court
28th Judicial District
Charleston, Missouri

5/31



Dear Judge McDowell:

This will acknowledge receipt of your letter of May 5, 1944, requesting an opinion of this office, which is as follows:

"A young man, by the name of Ed DeField, now in the Armed Forces in England was and is still the Assessor of our County, acting by Deputy.

"After his induction and while in the Army he has announced for re-election. Would you kindly give me your opinion as to whether or not he is eligible for re-election, he being in the armed services at the time he announced for office."

18 Am. Jur. Sec. 126, " * * * *As a general rule anyone who has the qualifications to fill an office may be a candidate for election to that office. * * * *"

From a reading of your letter, the only question presented would be, "does absence from the county on military service disqualify a person from becoming a candidate for public office?"

The Missouri Constitution, Art. VIII, Sec. 10, provides:

"No person shall be elected or appointed to any office in this state, civil or military, who is not a citizen of the United States, and who shall not have resided in this state one year next preceding his election or appointment."

"Residence" in the state for one year preceding election is necessary.

May 24, 1944

However, Sec. 7 of Art. VIII, provides:

"For the purpose of voting, no person shall be deemed to have gained a residence by reason of his presence, or lost if 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. "

Thus the constitution specifically provides that for the purposes of voting one does not lose one's residence by being absent on military service. It is difficult to see how the same argument can be avoided with reference to candidates for office. Residence in any event is largely a matter of intention, and intention is to be deduced from the acts and utterances of the person whose residence is in issue. In re, Lankford Estate, 272 Mo. 1. Here the proposed candidate is your present assessor and has been carrying on the office by deputy. This in itself is practically conclusive evidence of an intention to be a resident of your county.

CONCLUSION.

It is, therefore, the opinion of this office that absence from the state or county on military service would not in itself constitute a change of residence as would bar a candidacy for county office.

Respectfully submitted

ROBERT J. FLANAGAN
Assistant Attorney General

APPROVED:

ROY MCKITTRICK
Attorney General
RJM:LeC