

LIBRARIES:
COUNTY LIBRARIES:
COUNTY LIBRARY DISTRICTS:
STATE AID:

Persons residing on Federal military bases within the boundaries of county library district are residents of such district entitled to library services and are to be counted in determining county library district population for purposes of state aid.

OPINION NO. 185

November 27, 1963

FILED
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Honorable Paxton P. Price
State Librarian
State Office Building
Jefferson City, Missouri

Dear Mr. Price:

This is in answer to your letter requesting an official opinion of the Attorney General and reading as follows:

"Pulaski, Johnson and Cass counties have established county library districts. Are Ft. Leonard Wood (Pulaski County), Whiteman Air Force Base (Johnson County) and Richards-Gebaur Air Force Base (Cass County) within their respective county library districts, which are financially supported from county and state funds, and are these library districts responsible for providing library services to these aforementioned areas?"

Section 182.010, Revised Statutes of Missouri, provides for the formation of county library districts, which districts consist of all the territory of a county outside the limits of cities maintaining a tax supported library.

It follows, therefore, that if Fort Leonard Wood and the other United States military or Air Force bases are part of the counties in which they are physically located, such United States bases are part of the county library districts in which they are physically situated since all of such bases are outside of cities and the persons residing on such military bases are living in such county library districts.

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Persons who live on military bases are residents of the county library district in which the bases are physically situated, and hence, such persons should be counted in determining the population of such county library district for purposes of allocating state aid to such county libraries under provisions of Section 181.060, RSMo, which provides that at least fifty per cent of the moneys appropriated for state aid to libraries "shall be based on an equal per capita rate for the population of each * * * county or regional library district in which any library is or may be established, in proportion to the population according to the latest federal census of such * * * county or regional library districts", and also for the purposes of allocating state aid for establishment and equalization grants of state aid under such section which provides for "establishment grants on a population basis to newly established county or regional libraries and equalization grants on a population basis to county or regional libraries * * *." The 1960 federal census for the counties in which the federal military bases are located includes persons residing on military bases. Therefore for the purpose of determining the population of county library districts under Section 181.060, there should also be included, as part of the county population, persons residing on federal military bases in such counties.

Since persons residing on Federal military bases are residents of county library districts in the counties in which such bases are located, it also follows that such persons are entitled to library service in such county library districts under the provisions of Section 182.120, RSMo, providing that "service shall be available to all residents of the county library district."

Section 12.030, Revised Statutes of Missouri, provides as follows:

"The consent of the state of Missouri is given, in accordance with the seventeenth clause, eighth section of the first article of the Constitution of the United States, to the acquisition by the United States by purchase, condemnation, or otherwise, of any land in this state acquired prior to the effective date of sections 12.030 and

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12.040, as sites for customhouses, court-houses, post offices, arsenals, forts and other needful buildings required for military purposes."

Section 12.040, Revised Statutes of Missouri, provides as follows:

"Exclusive jurisdiction in and over any land acquired prior to the effective date of sections 12.030 and 12.040, by the United States, is ceded to the United States for all purposes, saving and reserving, however, to the state of Missouri the right of taxation to the same extent and in the same manner as if this cession had not been made; and further saving and reserving to the state of Missouri the right to serve thereon any civil or criminal process issued under the authority of the state, in any action on account of rights acquired, obligations incurred, or crimes committed in this state, outside the boundaries of the land but the jurisdiction ceded to the United States continues no longer than the United States owns the lands and uses the same for the purposes for which they were acquired."

For many years State and Federal courts in a long line of cases held that persons living on Federal military bases in states which had consented to exclusive Federal jurisdiction over territory obtained by the Federal Government for military bases, could not vote in state elections because such Federal military bases were not part of the state in which they were physically located.

The reasoning in such cases is well set forth in the case of Arlledge v. Mabry, 197 P.2d 884, 52 N.M. 303, decided in 1948 in which case the Supreme Court of New Mexico said, l.c. 891, in quoting from Consolidated Milk Producers v. Parker, 19 Cal.2d 815, 123 P.2d 440:

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"The same declaration occurs in some of the so called 'vote cases' since, indeed, all rest their decisions on the hypothesis that the land on which residence is claimed is outside the state territorially, within contemplation of law, so far as intended by the constitutional requirement of residence as a condition of the right to vote. In the case of *In re Town of Highlands*, supra [22 N.Y.S. 139], the court said:

"We turn to the question of the right of these people to vote. That has been decided in numerous cases. In the case of *Com. v. Clary*, 8 Mass. 72, the supreme court of Massachusetts held that the people on the government property at Springfield had no right to vote, and the question also arose, and was decided, in a case reported in 1 Metc. 583, (Supp.) * * * So, as Judge Field says, there is a uniform current of authority from the beginning of the government down to the decision of this (Ft. Leavenworth) case in 1884,--all to the effect that this territory is not part of the state. (Emphasis ours.) * * *"

The doctrine that a resident of a Federal military base is not a resident of the state in which the base is located was upheld also in a recent case by the Court of Appeals of Maryland. Such case is *Royer v. Board of Election Supervisors for Cecil County*, 231 Md. 561, 191 A.2d 446, certiorari denied by the Supreme Court of the United States, November 18, 1963. In that case the Court of Appeals of Maryland held that civilian employees of the United States Government residing on the Perry Point Veterans' Hospital grounds were not entitled to register and vote in Cecil County, Maryland, in which county the Veterans' Hospital was located, because the court held that residents of such Federal areas are not residents of the State of Maryland. It should, however, be noted that in granting the cession of such areas to the Federal Government, the

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State of Maryland did not reserve the right of taxation but reserved only the right to serve civil and criminal process on persons found within the Federal areas.

We do not, however, agree with the reasoning of such cases which hold that the territory in Federal military bases is not a part of the state in which it is located for any purpose, but we believe that the territory occupied by Federal military or naval bases is a part of this state and the counties in which such bases are located for purposes of determining the area comprising a county library district and for purposes of determining the population of such a county library district.

We believe that the correct reasoning is that set forth by the Supreme Court of West Virginia in the case of Adams v. Londeree, 83 SE2d 127, 139 W. Va. 748, and the District Court of Appeals, First District of California in the case of Arapajolu v. McMenamin, 249 P.2d 318, 113 Cal. App.2d 824, 34 A.L.R.2d 1185. In such cases, it was held that persons residing on territory in Federal military or naval bases may be entitled to vote at elections within the states in which the bases are located, because such persons are living in and can establish residence in such states. In the case of Arapajolu v. McMenamin the court said, 249 P.2d 318, 1.c. 322:

"In like fashion the Congress has receded and returned to the States jurisdiction over federal lands within their borders to enforce State unemployment insurance acts therein, 26 U.S.C.A. § 1606(d); to tax motor fuels sold therein, 4 U.S.C.A. § 104; to levy and collect sales and use taxes therein, 4 U.S.C.A. § 105; and to levy and collect State income taxes therein, 4 U.S.C.A. § 106. The power to collect all such taxes depends upon the existence of State jurisdiction over such federal lands and therefore may not be exercised in territory over which the United States has exclusive jurisdiction. Standard Oil Co. v. California, 291 U.S. 242, 52 S.Ct. 381, 78 L.Ed. 775. In recognition of this fact the Congress has made these recessions to the States in terms of jurisdiction, e.g. 4 U.S.C.A. §§ 105 and 106: 'and such State or taxing authority shall have full jurisdiction and power to levy and collect any such tax in any Federal area within such State * * *'; 26 U.S.C.A. § 1606(d): 'and any State shall have full jurisdiction and power to enforce the provisions of such law * * as though such place were not owned, held, or possessed by the United States.'

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"Of the recession by the Congress to the States of the jurisdiction over federal lands to levy and collect income taxes on incomes earned therein or by residents thereof the Supreme Court of Pennsylvania said in *Kiker v. City of Philadelphia*, 346 P. 624, 31 A.2d 289, at page 295, certiorari denied 320 U.S. 741, 64 S.Ct. 41, 88 L.Ed. 439:

" 'The reservation is immediately adjacent to Philadelphia; is geographically within its limits; and since December 31, 1940, because of the provisions of Public Act No. 819 [4 U.S.C.A. § 14], is actually part of that City for the purposes of imposing the tax here under consideration.' (Emphasis ours.)

"So in speaking of the recession of jurisdiction to collect taxes on motor fuel used or sold on federal lands the Oklahoma Supreme Court in *Sanders v. Oklahoma Tax Commission*, 197 Okl. 285, 169 P.2d 748, certiorari denied 329 U.S. 780, 67 S.Ct. 202, 91 L.Ed. 670, used the following language found on page 751 of 169 P.2d:

" 'It follows that plaintiff, having used the gasoline in an area which in legal contemplation was no different from any other part of the state, became liable for the tax upon its use and the trial court correctly so held.' (Emphasis ours.)

"There seems no necessity to multiply citations. It is clear that the Congress has receded to the States jurisdiction in substantial particulars over federal lands over which the United States previously had exclusive jurisdiction.

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It may no longer be said of those lands that they are, as said by the Ohio court in *Sinks v. Reese*, supra, 'as foreign to Ohio (California) as is the State of Indiana or Kentucky, or the District of Columbia.'

The Court pointed out that many of the cases holding that persons living on a Federal military base did not live in the state in which the base was located and were, therefore, not entitled to vote at elections in such state were decided before the Federal Government receded certain taxing jurisdiction to the states. The Court said, l.c. 323:

"* * * All of the election cases cited above, except *Arledge v. Mabry*, supra, 197 P.2d 884, in which residents on federal lands were held not to be residents of the State so as to qualify them to vote were decided at a time when the United States did have and exercise exclusive jurisdiction over those lands, and while *Arledge v. Mabry* was decided after the recessions of jurisdiction above set out the court in that case did not consider their effect but assumed that the United States still had an exercised exclusive jurisdiction. * * *

"The jurisdiction over these lands is no longer full or complete or exclusive. A substantial portion of such jurisdiction now resides in the States and such territory can no longer be said with any support in logic to be foreign to California or outside of California or without the jurisdiction of California or within the exclusive jurisdiction of the United States. It is our conclusion that since the State of California now has jurisdiction over the areas in question in the substantial particulars above noted residence in such areas is residence within the State of California entitling such residents to the right to vote given by sec. 1, Art. II of our Constitution."

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Of course, Section 12.040, supra, itself provides that the State of Missouri reserves the right of taxation to the same extent and in the same manner as if the cession had not been made.

In the case of Adams v. Londeree, 83 SE2d 127, the Court said, l.c. 138:

"In a number of Acts of Congress, rights of States to exercise jurisdiction in some respects over such reservations have been recognized, thus making it clear, we believe, that the lands within such reservations in some respects remain the territory of the ceding States. Thus, in the 'Buck Act' mentioned above, 4 U.S.C., § 14, the rights of the respective States to assess and collect 'such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area', were recognized. A statute, 40 U.S.C., § 290, 40 U.S.C.A. § 290, authorizes the several States to apply and enforce the workmen's compensation laws 'to all lands and premises owned or held by the United States of America by deed or act of cession, by purchase or otherwise * * *'. Another statute, 16 U.S.C., § 457, 16 U.S.C.A. § 457, provides that in case of wrongful death 'within a national park or other place subject to the exclusive jurisdiction of the United States * * * such right of action shall exist as though the place were under the jurisdiction of the State * * *'. Another Act, 26 U.S.C., § 1606, authorizes the respective States to enforce their unemployment compensation laws over 'premises owned, held, or possessed by the United States, and any State shall have full jurisdiction and power to enforce the provisions of such law to the same extent and with the same effect as though such place were not owned, held, or possessed by the United States'. As early

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as 1825 the Congress enacted an assimilation crime statute, providing, in effect, that any offense for which any penalty was not provided by Federal law should be subject to the penalty provided by the State. Revised Statutes, Second Edition, § 5391. Thus, the effect of such statutes is to recognize or vest in the respective States certain rights and privileges over such reservations and, especially in view of later Acts of Congress authorizing acceptance by the United States of partial jurisdiction, there certainly no longer exists any basis for the holdings to the effect that the United States must have and exercise complete and exclusive jurisdiction over such reservations. 'In matters not affecting the operation of the national government, there is no sound reason why federal area residents should not have the same rights, immunities, and responsibilities as residents of the surrounding state'. 58 Yale Law Journal 1402, 1406."

The Court further said, i.c. 140:

"It may be that in the early history of our country, when the areas of such reservations were few and small (see West Virginia statute quoted above limiting areas which could be ceded to twenty-five acres), there was some justifiable reason, or at least no serious injustice, in holding that the Federal Government acquired sole sovereignty over such ceded lands. But can such a result be justified where large and numerous areas are now owned and are being continually acquired by the United States? However that may be, the United States has, we think, long since refused to accept sole sovereignty of such ceded lands and has repeatedly, both through its Courts and by Acts of Congress, recognized and insisted that States have retained sovereignty as

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to such matters as do not interfere or conflict with the use of the areas by the United States for the purpose or purposes for which the same was ceded. By so holding, the necessity of disfranchising a large number of citizens is avoided."

The Supreme Court of the United States in Howard v. Commissioners of the Sinking Fund of the City of Louisville, 344 U.S. 624, 97 L.Ed. 619, 73 S.Ct. 465, held that the territory occupied by a naval ordnance plant is a part of the state in which it is located. The Court said, 344 U.S., l.c. 626:

"The appellants first contend that the City could not annex this federal area because it had ceased to be a part of Kentucky when the United States assumed exclusive jurisdiction over it. With this we do not agree. When the United States, with the consent of Kentucky, acquired the property upon which the Ordnance Plant is located, the property did not cease to be a part of Kentucky. The geographical structure of Kentucky remained the same. In rearranging the structural divisions of the Commonwealth, in accordance with state law, the area became a part of the City of Louisville, just as it remained a part of the County of Jefferson and the Commonwealth of Kentucky. A state may conform its municipal structures to its own plan, so long as the state does not interfere with the exercise of jurisdiction within the federal area by the United States. Kentucky's consent to this acquisition gave the United States power to exercise exclusive jurisdiction within the area. A change of municipal boundaries did not interfere in the least with the jurisdiction of the United States within the area or with its use or disposition of the property. The fiction of a state within a state can have no validity to prevent the state from exercising its power over the federal area within its boundaries, so long as there is no interference with jurisdiction asserted by the Federal Government. The sovereign rights in this dual relationship are not antagonistic. Accommodations

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and cooperation are their aim. It is friction, not fiction, to which we must give heed."

The Supreme Court of Missouri in the case of Lankford v. Gebhart, 130 Mo. 621, 32 SW 1127, held that a person who was living permanently in a soldiers' home in Kansas could not vote in Missouri because he was a resident of the State of Kansas. The Court said, l.c. 1131:

"The evidence shows that Snyder had lived in Daviess county for many years, but at the date of the election was a member of the soldiers' home at Leavenworth, Kan. It did not appear how long he had been a member of the home. Snyder testified that he was a 'permanent' member of the home, and was admitted free, but testified further that he had no intention of changing his residence from Daviess county, in this state, and that he had been home on furlough for four months preceding the election. * * * The evidence that he was a permanent member of the home, and that he was not permitted to leave it without a license or furlough from the manager, would tend very strongly to prove a change of residence. Under the evidence the court may well have inferred that a permanent residence was adopted in the state of Kansas, and, in the absence of any declaration of law, we must presume that it so found."

In the case of Kokinakis v. Kokinakis, 180 SW2d 243, the Springfield Court of Appeals held that a person residing on the Ft. Leonard Wood Military Base is a resident of Missouri, insofar as the divorce laws of this State are concerned. The Court said, l.c. 244:

"Plaintiff was in the service of the United States. He was not drafted; but enlisted in the State of Michigan, and had been at Fort Leonard Wood for some months. Plaintiff's testimony on the questions of residence was as follows: 'I reside at Fort Leonard Wood, Missouri, Pulaski County.' He and defendant were married in Waynesville, Pulaski County, Missouri, on January 14, 1943, and separated about January 25, 1943. The indignities,

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concerning which plaintiff testified, and which were sufficient for divorce, need not be detailed here. They occurred in Pulaski County, Missouri

* * * * *

"There was no question but that the indignities complained of occurred in this state, or that defendant was then a resident of this state. Plaintiff testified that it was his intention to make Missouri his home. Residence is entirely a matter of intention. No matter if plaintiff did belong to the United States Army and was likely to be ordered out of the state at any time, he was undoubtedly a resident of Missouri when he married defendant and filed suit for divorce, and intended to make Missouri his home."

It is to be noted that the Supreme Court of New Mexico which held in the case of Arledge v. Mabry, supra, that persons on a Federal military base are not residents of the state in which the base is located and could not, therefore, vote at elections in such state also held in the case of Chaney v. Chaney, 201 P.2d 782, 53 N.M. 66, that a person residing on such a base is not entitled to a divorce in New Mexico because such person is not a resident of the State of New Mexico.

In Missouri, however, as pointed out in the Kokinakis case, supra, the holding has been made that a person residing on a Federal military base is a resident of this state and is a resident of the county in which such base is located insofar as divorce proceedings are concerned.

CONCLUSION

Persons living on Federal military bases located in the State of Missouri are residents of county library districts whose geographical boundaries include such Federal bases and such persons are to be counted in determining the population

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of such county library districts for ascertaining the amount of state aid the county library districts are entitled to receive and such persons are entitled to the services of the libraries established in such districts.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, C. B. Burns, Jr.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

CBB: jh