

1370.

VOTING RESIDENCE—WHERE PERSON REMOVED TO DISTRICT OF COLUMBIA OR OTHER FEDERAL TERRITORY—GOVERNMENTAL SERVICE—STATE EMPLOYMENT—WHILE SO ENGAGED MAY VOTE AT PLACE WHERE HE RESIDED—NO TIME LIMITATION—STATUS UPON RETIREMENT FROM SUCH SERVICE—ABSENCE IN EXCESS OF THREE YEARS—LOSES RIGHT TO VOTE FROM SUCH RESIDENCE—SEE OPINION 878, JULY 13, 1939, PAGE 1190.

*SYLLABUS:*

1. *A person who has removed to the District of Columbia or other federal territory, to engage in the government service, or has removed to enter the employment of the state, shall while in such service or employment be permitted to vote at the place where he resided at the time of such removal, regardless of the length of time such person remains away from the place from which he removed.*

2. *If such person retires from the government service or from the employ of the state and after such retirement remains away from the place from which he removed to enter such service, he shall be permitted to vote at the place from which he removed for a period of three years, provided it is his intention to return thereto, however, if absent therefrom for a period in excess of three years, he will have lost his right to vote at the place from which he removed.*

COLUMBUS, OHIO, November 1, 1939.

HON. PAUL D. MICHEL, *Prosecuting Attorney, Marion, Ohio.*

DEAR SIR: This will acknowledge receipt of your communication of recent date, which reads as follows:

“Will you please furnish this office your opinion on the following, to-wit:

General Code Section 4785-31g provides as follows:

‘All registrars and judges of elections, in determining the residence of a person offering to register or vote shall be governed by the following rules so far as they may be applicable. If a person removed to the District of Columbia or other Federal territory to engage in the government services he shall not be considered to have lost his residence in this State during the period of such services, and the place where such person resided

at the time of his removal shall be considered and held to be his place of residence'.

The question is :

Does a person, who has removed to the District of Columbia to engage in government services and has been in government service and finally retires from the service, and remains living in the District of Columbia, come within the purview of this statute?

Also, would such a person, after retiring from government service and remaining in the District of Columbia and entering into private business come within the purview of this statute?"

Section 4785-31, General Code, in so far as is pertinent to your inquiry, reads as follows :

"All registrars and judges of elections, in determining the residence of a person offering to register or vote, shall be governed by the following rules, so far as they may be applicable :

\* \* \* \* \*

b. A person shall not be considered to have lost his residence who leaves his home and goes into another state or county of this state, for temporary purposes only, with the intention of returning.

\* \* \* \* \*

g. If a person remove to the district of Columbia, or other federal territory to engage in the government service, he shall not be considered to have lost his residence in this state during the period of such service, and likewise should he enter the employment of the state, the place where such person resided at the time of his removal shall be considered and held to be his place of residence.

\* \* \* \* \*

j. The term 'temporary purposes', as used in this section, shall be construed to permit a period of absence not in excess of three years."

A reading of paragraph g of the above section makes it at once apparent that the residence in this state of a person engaged in the government service is not lost during the period of such service.

In order to determine whether or not such person has lost his residence in this state by a continued absence therefrom, after his retirement from the government service, reference should be made to paragraphs b and j of the above section. A reading thereof clearly indicates that the answer thereto depends entirely upon the length of time that such person

remains away from the place from which he removed and his intention of returning to such place; that is, if his absence from the state is for temporary purposes only, with the intention of returning, such person obviously has not lost his residence in this state and may continue to vote at the place where he resided at the time of his removal. If, however, it is not his intention to return to Ohio, his residence outside of Ohio cannot be regarded as temporary and, of course, under such circumstances he would not be permitted to vote in this state.

In connection therewith, however, it will be noted that paragraph j of section 4785-31, *supra*, provides that the term "temporary purposes" shall be construed to permit a period of absence not in excess of three years. This language removes all doubt as to the length of time a person may be temporarily absent from his home and still be permitted to vote at the place from which he removed. We have in the above section an expression from the Legislature with respect to the construction to be placed upon its own language which leaves no doubt of the intent and purpose of that body in the enactment of said section.

I feel, therefore, that it can be safely stated that an absence in excess of three years would, in so far as voting rights are concerned, no longer be for temporary purposes and under the provisions of paragraph b, *supra*, a person who is not engaged in the government service or in the employ of the state would, if absent from his former home for a period in excess of three years, lose his right to vote at the place where he resided at the time of his removal therefrom.

Therefore, in specific answer to your question, it is my opinion that:

1. A person who has removed to the District of Columbia or other federal territory, to engage in the government service, or has removed to enter the employment of the state, shall while in such service or employment be permitted to vote at the place where he resided at the time of such removal, regardless of the length of time such person remains away from the place from which he removed.

2. If such person retires from the government service or from the employ of the state and after such retirement remains away from the place from which he removed to enter such service, he shall be permitted to vote at the place from which he removed for a period of three years, provided it is his intention to return thereto, however, if absent therefrom for a period in excess of three years, he will have lost his right to vote at the place from which he removed.

Respectfully,

THOMAS J. HERBERT,

*Attorney General.*