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MEMBER OF MILITARY SERVICE LIVING OFF BASE—SUCH MEMBER NOT PROHIBITED FROM VOTING BY—ARTICLE V, SEC. 5, OHIO CONSTITUTION—§3503.01, R.C.

SYLLABUS:

A member of the military service who is stationed at a military base within this state but who lives off the premises of such base is not prohibited by Article V, Section 5 of the Ohio Constitution from being considered a resident of this state for voting purposes if he otherwise meets the requirements of Section 3503.01, Revised Code, for his exercise of the right to vote.

Columbus, Ohio, March 17, 1960

Hon. Mathias H. Heck, Prosecuting Attorney  
Montgomery County, Dayton, Ohio

Dear Sir:

I have before me your request for my opinion on the following question:

“Is a member of the military service, who is stationed at a military installation but who lives off the premises of said installation in Montgomery County, Ohio, considered a resident of this state for voting purposes if he has resided in the state of Ohio for one year and in the county and precinct for forty days next preceding the election at which he offers to vote and has correctly completed and signed the registration form provided for by Section 3503.14, R.C.O.”

The question you present is raised by Article V, Section 5 of the Constitution of the State of Ohio, which reads as follows:

“No person in the military, naval or marine service of the United States, shall, by being stationed in any garrison, or military, or naval station, within the state, be considered a resident of this state.”

If this constitutional provision must be interpreted to read by being assigned to duty at any particular military base within the state a person is absolutely barred from becoming a resident of the state, then the answer to your question must be in the negative.

While no case has been found directly in point several statutes of the state must also be considered. Section 3503.01, Revised Code, reads in pertinent part as follows:

“Every citizen of the United States who is of the age of twenty-one years or over and who has been a resident of the state one year, of the county forty days, and of the voting precinct forty days next preceding the election at which he offers to vote has the qualifications of an elector and may vote at all elections, provided that any qualified elector who in good faith moves his residence from one county to another county or from one precinct to another precinct in the same county at any time subsequent to the fortieth day preceding an election may vote at such election in the precinct from which he moved wherein his voting residence had been legally established. In any precinct where registration is required, electors who have moved from one residence to another residence within the same precinct shall be permitted to vote and the election officials shall note the change of address on the proper forms.

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Section 3503.07, Revised Code, is somewhat similar in its coverage and reads as follows:

“Each person who will be of the age of twenty-one years or more at the next ensuing November election, who is a citizen

of the United States, and who, if he continues to reside in the precinct until the next election, will at that time have fulfilled all the requirements as to length of residence to qualify him as an elector shall, unless otherwise disqualified, be entitled to be registered as an elector in such precinct. When once registered, an elector shall not be required to register again unless his registration is canceled."

Also to be considered is Section 3503.02, Revised Code, which 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 rule:

"(A) That place shall be considered the residence of a person in which his habitation is fixed and to which, whenever he is absent, he has the intention of returning.

"(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.

"(C) A person shall not be considered to have gained a residence in any county of this state into which he comes for temporary purposes only, without the intention of making such county his permanent place of abode.

"(D) The place where the family of a married man or woman resides shall be considered to be his or her place of residence; except that when the husband and wife have separated and live apart, the place where he or she resides the length of time required to entitle a person to vote shall be considered to be his or her place of residence.

"(E) If a person removes to another state with the intention of making such state his permanent residence, he shall be considered to have lost his residence in this state.

"(F) If a person removes to another state with the intention of remaining there an indefinite time and making such state his place of residence, he shall be considered to have lost his residence in this state, notwithstanding the fact that he may entertain an intention to return at some future period.

"(G) If a person removes out of the county to engage in the services of the United States government, 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 to be his place of residence.

“(H) If a person goes into another state and while there exercises the right of a citizen by voting, he shall be considered to have lost his residence in this state.

“(I) If any person attends any institution of learning, his residence and the residence of his spouse, if any, shall be determined according to the place where he resided prior to admission to such institution and not by the place where he resides while attending such institution, unless such person shall establish or acquire a home for permanent residence.

“ ‘Temporary purposes,’ as used in this section, shall be construed to permit a period of absence not in excess of three years.”

It would appear from a perusal of the statutes that residence in a particular county for at least forty days and in this state for one year prior to an election is an essential requirement for the exercise of the right to vote in Ohio. Such residence is to be determined by the rules set forth in Section 3503.02, Revised Code. The application of these statutory rules is conditioned, however, by the limitation contained in Article V, Section 5 of the Constitution. There would appear, however, to be no essential conflict between the constitutional prohibition and the rules of residence adopted by the General Assembly. The obvious intent of the constitutional prohibition was to bar the use of assignment of military personnel to a military base within this state as an indicia of legal residence for voting purposes. Stated otherwise, the mere fact of being stationed at a military base within the state does not and cannot, in and of itself, fulfill the residence requirement. A person in the military service who is assigned to duty at a military base within the state and who maintains his living quarters on such base is prohibited under the terms of this provision from using these facts alone to claim legal residence in Ohio for voting purposes. This same constitutional provision could not, however, be interpreted as barring a person assigned to duty at a military base within this state and who maintains his living quarters out of the confines of such base from exercising the privilege of establishing Ohio residence and using his right to vote in this state.

The question of legal residence is primarily a matter of intent. Thus, if a member of the military service has indicated his choice of residence by the purchase of a home in one state and retains that home even though transferred to a place of duty outside the state, he must be considered to have his legal residence in the state where his home is located. *Millis v. Millis*, 17 O. N. P. (N.S.), 254. See also Ohio Jurisprudence, 2d, 163.

In applying Article V, Section 5 of the Ohio Constitution to the rules of residence contained in Section 3503.02, Revised Code, a board of elections in any county in this state is prohibited from considering the fact of being stationed at a military base within the state or the maintenance of living quarters on such base as indicia of intent of a person so stationed to make the particular county his permanent place of residence. But such board of elections is free to consider the establishment of a place of residence off a military base as at least one factor in determining that a member of the military service has expressed the necessary intent to establish a permanent residence within the particular county.

It is, therefore, my opinion and you are accordingly advised that a member of the military service who is stationed at a military base within this state but who lives off the premises of such base is not prohibited by Article V, Section 5 of the Ohio Constitution from being considered a resident of this state for voting purposes if he otherwise meets the requirements of Section 3503.01, Revised Code, for his exercise of the right to vote.

Respectfully,

MARK McELROY

Attorney General