

878.

VOTING RESIDENCE—WHEN PERSON REMOVES FOR TEMPORARY PURPOSES—INTENT TO RETURN—ABSENCE, CONTINUOUS PERIOD IN EXCESS OF THREE YEARS—LOSES RESIDENCE—EXCEPTION—ENGAGED IN SERVICE OF FEDERAL OR STATE GOVERNMENT—SECTIONS 4785-31 ET AL., G. C.—SEE OPINION 1370, NOVEMBER 1, 1939, PAGE 2034.

**SYLLABUS:**

*A person who removes from his voting residence for temporary purposes, with the intention of returning, and remains away for a continuous period in excess of three years, shall, under the provisions of section 4785-31, General Code (House Bill No. 624 of the 93rd General Assembly), be considered to have lost such residence, unless during such absence he was engaged in the service of the federal or state government.*

COLUMBUS, OHIO, July 13, 1939.

HON. T. B. WILLIAMS, *Prosecuting Attorney, New Lexington, Ohio.*

DEAR SIR: This will acknowledge receipt of your request for my opinion, which reads as follows:

“Section 4785-31 of the General Code was recently amended and an additional paragraph was added and known as paragraph ‘J’ and reads as follows:

‘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’. The Board of Elections of this county desires your opinion on the following:

1. A resident of this county secures employment as school teacher in another county in this State and during vacation returns to the home of her parents in this county where she considers to be her place of residence, and she remains here until the beginning of the school year. She has been employed in such county for more than three years and has voted an absent voter’s ballot each year.

Under the above state of facts is she precluded from voting an absent voter’s ballot this year, in this county under the ‘temporary purposes’ provision mentioned in paragraph ‘J’ of section 4785-31 of the General Code, notwithstanding her intention is to return to her parents’ home each vacation time and considers the home of her parents her place of residence.

2. John Doe for more than ten years was in the employment of the State of Ohio, and resided in the city of Columbus, Ohio; nearly a year ago he ceased to be in the employ of the State of Ohio. When his employment with the state ceased he decided to reside in the city temporarily with his family but with the intention of returning to this county sometime in the future. During the time he was in the employment of the State he voted in Perry County.

Under the above state of facts can he still vote in this county and will his right to vote cease after three years as provided by paragraph 'J' of section 4785-31?

3. A, formerly resided in another state. He came to Perry County to attend college, located in this county, to study for the Priesthood. While attending college here, after his first year, he votes in Perry County. In order to complete the necessary studies before he can be ordained he attends college in Washington, D. C., where he has attended for the last three years or more and during all of which he votes an absent voter's ballot. Section 4785-33a, as I take it could not apply in such a case as he lived out of the state before going to said college.

(a) Under the circumstances mentioned above was 'A' ever a legal voter in Perry County?

(b) If you decide he was a legal voter in Perry County, can he vote an absent voter's ballot if away from Perry County for more than three years as provided by paragraph 'J' of section 4785-31, General Code?

4. Several persons, residents of this county, removed to Washington, D. C., to engage in the government service. After being engaged in the government service for a number of years they retired from the service, having retired from the government service more than three years ago, during all the time they were in the service and since, they considered Perry County their place of residence and voted in this county by absent voter's ballots.

Upon the facts stated above, can they legally vote in this county and does the three years' limitation provided in paragraph 'J' apply?"

The residence qualifications incident to voting are contained in Article V, section 1 of the Constitution of Ohio, and section 4785-30, General Code (House Bill No. 624, 93rd General Assembly). Article V, section 1 provides as follows:

"Every citizen of the United States, of the age of twenty-one years, who shall have been a resident of the state one year next

preceding the election, and of the county, township, or ward, in which he resides, such time as may be provided by law, shall have the qualifications of an elector, and be entitled to vote at all elections.”

Section 4785-30, *supra*, now reads as follows :

“No person shall be permitted to vote at any election unless he shall have been a resident of the state for one year, of the county for thirty days, and of the voting precinct twenty-eight days next preceding the election at which he offers to vote, provided that any qualified elector who in good faith removes from one precinct to another precinct in the same county at any time subsequent to the twenty-eight day preceding an election shall have the right to vote at such election in the precinct from which he moved wherein his voting residence had been legally established.”

The rules for determining the residence of a person offering to register or vote are contained in section 4785-31, General Code. Said section was recently repealed and reenacted by House Bill No. 624, 93rd General Assembly, as an emergency measure and consequently went into immediate effect upon approval by the Governor on April 27, 1939. This section, as it now exists, is quoted below in full :

“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 :

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 and held to be his or her place of residence ; except that where the husband and wife have separated and live apart, the place where he or she resides the length of time by the provisions of this act to entitle a person to vote,

shall be considered and held to be his or her place of residence.

e. If a person remove 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 remove 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, he may entertain an intention to return at some future period.

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.

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. All questions of the right to vote shall except as otherwise provided herein, be heard and determined by the judges of election in the precinct where the question arises.

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."* (Emphasis the writer's.)

The portions emphasized indicate the changes which resulted from the reenactment. Your questions are chiefly concerned with the changes in that section and will be considered in the order in which they appear in your request.

Your first case is concerned with the voting residence of a school teacher who teaches in another county but spends the summer vacations with her parents in Perry County. You state that this teacher considers the home of her parents in Perry County to be her residence. According to section 4785-31b, supra, "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." Under the circumstances, it would appear that the teacher in question resided in Perry County, and the mere fact that she temporarily leaves that county each year to teach school would not cause her to lose such residence. The fact that the teacher over a period of years might be temporarily absent from Perry County in excess of three years, would not cause her to lose her residence in that county. It is true that section 4785-31j, supra, provides that "the term 'temporary purposes', as used in this section, shall be construed to permit a period of absence

not in excess of three years." However, I feel the period of absence mentioned in that paragraph refers to a continued absence; otherwise, it could be said a person who travels outside his "home" county six months of each year would lose his voting residence after a period of six years. Obviously, such was not the legislative intent.

In your second question you inquire concerning the voting residence of one who for more than ten years was in the employment of the state and during such employment resided in Columbus but voted in Perry County, his "home" county. You state in your letter that more than one year ago this person left the employ of the state but continued to live in Columbus with the intention, however, of returning to Perry County in the near future. In view of his absence of eleven years you seek my opinion as to whether or not section 4785-31j, *supra*, would apply. Section 4785-31g, *supra*, provides that should a person enter the employment of the state *during the period of such service*, the place where such person resides immediately prior thereto shall be considered and held to be his place of residence. In view of this enactment, the provisions of section 4785-31j, *supra*, limiting temporary absence to three years would not apply during the time the employe in question was engaged in the state service. In the eyes of the law, for the purposes of voting residence, such employe is considered physically present in his "home" county while so employed. However, once such person leaves the state service, the time limitation set forth in section 4785-31j, *supra*, begins to run, and if such person remains away from his "home" county in excess of three years after leaving the service even though he intends to return to his "home" county, the law considers such absence not to be temporary and voting residence in the "home" county is lost.

To gain a voting residence in this state, a person must reside here the minimum constitutional and statutory periods set forth in Article V, section 1 of the Constitution, and section 4785-30, *supra*. The question of residence is one to be determined by the election officials in the several counties. You state in question No. 3 of your communication that "A" was permitted to vote in Perry County after residing there one year. Apparently, the election officials in your county were of the opinion that "A" was a legal resident of the county. Under the circumstances, since in the absence of abuse of discretion or any action contrary to law, those officials are the sole judges of the question of voting residence, in answer to question 3a, I must conclude that "A" was a legal voter of Perry County.

The recent addition to paragraph "J" of section 4785-31, *supra*, did not change the theory of the law as it existed prior to such addition. The law has always been that a temporary absence from a voting district did not result in the loss of a voting residence. The addition above referred to merely set up a rule to determine a temporary absence to the effect that a continued absence in excess of three years, as a matter of law, was not a temporary absence for the purpose of voting residence. Thus, in

answer to question 3b, it would appear that "A" has now lost his voting residence in Perry County because of his continued absence from said county in excess of a three-year period. As stated in your letter, section 4785-33a, General Code, would not apply to the case of "A" in that said section is concerned only with a person *in this state* who moves from one county to another to attend any college, etc., located in such other county.

The problem presented by your fourth question is very similar to your second question and may be answered in like manner. Your second question deals with one in the state service, while question No. 4 is concerned with the voting residence of one who was engaged in the service of the federal government. Section 4785-31g, *supra*, provides that if a person remove to the District of Columbia 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 the place where such a person resided at the time of his removal shall be considered and held to be his place of residence. As stated in my answer to question No. 2, while such person is engaged in the government service, for the purpose of voting, he is considered to be a resident of the voting district from which he removed and the provisions of section 4785-31j, *supra*, would not apply. However, as soon as such employe leaves the government service, the provisions of that section will become operative and should such person then be absent from his voting district, in excess of three years, as in the case stated in your fourth question, he would then lose his voting residence in such district.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

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879.

BONDS—SUMMIT COUNTY, \$430,000.00.

COLUMBUS, OHIO, July 14, 1939.

*Industrial Commission of Ohio, Columbus, Ohio.*

GENTLEMEN :

RE: Bonds of Summit County, Ohio, \$430,000.

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise all of an issue of re-funding bonds in the aggregate amount of \$430,000, dated June 1, 1939, and bearing interest at the rate of  $2\frac{1}{4}\%$  per annum.