

**OPINION
64-88**

December 15, 1964 (OPINION)

Mr. Fred Pugarelli

Editor, Military Press

Honolulu, Hawaii

RE: Elections - Eligibility of Military Personnel - Residency

This is in reply to your letter of December 4, 1964, in regard to military personnel stationed in this state and their voting rights.

In the first instance, I believe it appropriate to state that this state does not discriminate either in favor of or against military personnel in exercising their right to vote. However, there is a basic qualification for voting in this state to the effect that the voter must be a resident of this state. The basic statutory provision for determining residence is section 54-01-26 of the North Dakota Century Code which provides:

"RESIDENCE - RULES FOR DETERMINING. - Every person has in law a residence. In determining the place of residence the following rules shall be observed:

1. It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he returns in seasons of repose;
2. There can be only one residence;
3. A residence cannot be lost until another is gained;
4. The residence of the father during his life, and after his death, the residence of the mother, while she remains unmarried, is the residence of the unmarried minor children;
5. The residence of the husband is presumptively the residence of the wife;
6. The residence of an unmarried minor who has a parent living cannot be changed by either his own act or that of his guardian; and
7. The residence can be changed only by the union of act or intent."

The difficulty that military personnel stationed here, by reason of military orders, face in voting is with subsection 1, i.e., that such military service in most instances would be considered special or temporary purpose, and that the individual is stationed here by reason of the military orders rather than by reason of an intent to establish a residence here.

Your first specific question is stated as:

- (1) Do you allow military personnel (and military dependents) stationed on Federal reservations in your state to vote in your state? If so, what proof, if any, are they required to give the registrar of voters to prove they intend to make your state their home? What offices do you allow on-base personnel to vote for? All offices pertaining to the area the base is in, or just Federal offices?"

Resident military personnel and dependents stationed on Federal reservations in this state are allowed to vote in this state. Nonresident military personnel are not allowed to vote in this state. The standard form of proof of residence is an affidavit of the prospective voter that he is a resident. Cases, of course, may vary and it is conceivable that a greater or lesser amount of proof may be appropriate in any given case. The concept of nonresident military personnel using our voting machinery to vote for Federal offices is interesting but I know of no specific instance or case where such has been allowed. As I understand the usual practice the voter, where a resident, can vote for all offices local, state and national. Where the voter is not a resident he does not use our voting "machinery" to vote for any office.

Your second question is stated as:

- (2) Do you allow military personnel (and military dependents) living in the civilian communities in your state to vote in your state? If so, what proof, if any, are they required to give the registrar of voters to prove they intend to make your state their home? What offices do you allow off-base personnel to vote for?"

Actually, while there is obviously a practical distinction between the military individual living on base, and the military individual living in off-base facilities; i.e., it is easier to believe that an individual living in off-base facilities intends North Dakota to be his permanent home, than it is to believe that a person living in on-base facilities intends North Dakota to be his permanent home, there is no theoretical legal distinction. The basic legal question in either case is the intent of the prospective voter, and the standard item of proof in this regard is his affidavit (for voting purposes). Here again the individual would be able to vote for all officials from the precinct he was voting in on up to national level.

Your last question is stated as:

- (3) What provisions do you make for servicemen (and military dependents) from your state, who are away, to vote by absentee ballot? Do they have to have registered to vote before entering the service? Or may they register for the first time while away from the state on military duty? What evidence that they are bona fide residents of the state do you require of such military personnel? How should they apply for voting registration and an absentee ballot?"

Military personnel away from this state may vote in elections in this state by absentee voters ballot. They may register for the first time while away from the state on military duty. The absentee voter forms sent to the absentee include the standard proof of residence for absentee voting form. The prospective absentee voter writes to the county auditor of the county in which he resides and the county auditor sends him the necessary forms. The voter then fills them out and mails them to the county auditor, who sees that the ballot portion of such forms is counted at the time other votes are counted. The county auditor by law is required to send absentee ballots to all servicemen who are qualified to vote - he need not wait for the application. (See sections 16-18-11 and 16-18-12 of the North Dakota Century Code).

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