

Opinion No. 53-5841

November 4, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Senator Murray E. Morgan Majority Floor Leader New Mexico State Senate
Alamogordo, New Mexico

{*259} On October 6, you addressed to this office an inquiry concerning the right of persons residing on military reservations to vote in the State of New Mexico. You call attention to three types of government ownership, which are specifically, (1) Fee lands acquired by the government under lease; (2) Public domain taken over by the government from lessees under the Taylor Grazing Act, where the lease has been condemned or otherwise forfeited by the lessee; and (3) Lands within a military reservation and under the unquestioned control of the United States Government, but let to an individual contractor under a long-term lease, as provided in the Wherry Act, as a site for the construction and rental of defense housing.

The question must be determined by seeking out and determining the extent of control exercised by the Federal Government. In the situation wherein the State has ceded to the Federal Government exclusive jurisdiction, except for "the right to {*260} serve civil and criminal process", which right is retained in the State, the Federal Government has exclusive jurisdiction and residents of such an area cannot acquire sufficient domicile in the State of New Mexico to permit them to vote. The case of **Arledge v. Mabry**, 52 N.M. 303, 197 P. 2d 884, holds that the ceding of jurisdiction to the Federal Government gives rise to an "island" or area within the State that is not a part of the State. There was involved in that case, however, a certain amount of public domain, the jurisdiction of which had not been accepted by the Federal Government.

Those persons who had acquired residence prior to the acceptance by the Federal Government of exclusive jurisdiction should be permitted to vote. The same would be true of any fee lands leased by the government. Immediately upon the acceptance by the United States Government of exclusive jurisdiction and control over any lands, those lands become "set apart" and become a part of the United States not in anyway controlled by any of the States. The date of acceptance by the Government of the United States of exclusive jurisdiction would be the date after which domicile for voting purposes cannot be acquired.

Thus, it is the opinion of this office that on any lands over which the United States Government has acquired exclusive control, except for the purpose of service of civil and criminal process, no residence can be acquired for the purpose of voting.

Answering your questions specifically, (1) as to fee lands acquired by the government under lease (I presume you mean lands privately owned but leased to the government by the owner), the persons living on those lands would acquire residence for voting

purposes unless the State of New Mexico, as fee owner, had ceded to the United States Government exclusive jurisdiction over these lands and that ceding had been accepted by the War Department. (2) As for public domain acquired by the government, the same answer is true as in the case of fee lands. However, you will find that jurisdiction over vast amounts of lands has been acquired by the Federal Government and if such acquisition has occurred, no residence may be acquired after such acquisition. (3) The lands within military reservations and under the control of the government cannot give rise to the acquisition of sufficient domicile for the purpose of acquiring voting privileges. The reservations must be included in some precinct in order that the persons who have heretofore established residence may vote in the election.

Of course, the persons living on the lands and having heretofore acquired New Mexico residence either on those lands or elsewhere, may vote in New Mexico if they are otherwise qualified.

We sincerely hope that this answers your inquiry.

By: Fred M. Standley

Assist. Attorney General