

Opinion No. 57-171

July 16, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Fred M. Calkins, Jr.,
Assistant Attorney

TO: Mr. James C. Compton, District Attorney, Portales, New Mexico

QUESTIONS

QUESTIONS

Are various members of the Air Force, who have lived in Curry County, New Mexico, for more than one year, but who have recently moved into the housing unit for families located on the Air Force Base, qualified to register and vote in special local option elections?

CONCLUSION

See opinion.

OPINION

ANALYSIS

Section 46-3-1, N.M.S.A., 1953 Compilation, pertaining to elections for local option, specifies that only "legal voters" may cast ballots in local option elections. The section further states that at such elections the registration shall be shown by the final registration books of the precincts for the last preceding general election. Since a legal voter must have resided in the county where he wishes to vote ninety days **next preceding** the election, the question arises as to whether residence for voting purposes can be acquired by an airman living in and upon the Clovis Air Force Base.

In Attorney General's Opinion No. 6425, written April 20, 1956, the writer of that opinion was presented with a similar problem when it was asked whether residence for voting purposes could be acquired within the Wherry Housing Areas at White Sands Proving Grounds and Holloman Air Force Base. The opinion points out that these questions cannot be categorically answered, citing the case of *Arledge v. Mabry*, 52 N.M. 303, the landmark case on this subject. The opinion stated:

". . . that upon lands acquired either by purchase or condemnation, 'residence' for voting purposes could not be established thereon since these lands came within the exclusive jurisdiction of the United States Government and were 'Islands' so to speak, within the State of New Mexico which were not within this State for the purpose of voting."

The opinion went on to state that upon lands within these installations which formerly were part of the public domain, "residence" for voting purposes could be established thereon. The opinion pointed out that on land which was formerly part of the public domain, concurrent jurisdiction is exercised by both the State of New Mexico and the Federal Government, even though title was held by the Federal Government.

By way of conclusion in regard to this point, the opinion states:

"For these reasons it must be determined by you what, if any, portions of the subject installations were originally public domain, and upon which 'residence' may be acquired, or which portions fall within the condemned or purchased category and upon which 'residence' for voting purpose cannot be established."

Based upon the above opinion, it would appear in the instant case that it will be necessary for the District Attorney's Office to determine whether the subject installation is within lands originally public domain and upon which residence can be acquired, or whether they lie within the condemned or purchased category where residence for voting purposes cannot be established.

One further question remains, i.e., whether an airman may acquire residence in New Mexico for the purpose of voting.

This office has previously ruled on this particular question in Attorney General's Opinion No. 4549, dated July 18, 1944.

In the Opinion, it states that a serviceman may acquire residence in New Mexico if he intends to make this state his permanent abode. Whether a serviceman has acquired residence is a question of fact to be determined separately in each individual case. The opinion further states that if a properly executed affidavit of registration is presented to the county clerk, she is required to accept the said affidavit of registration, and apparently no provision authorizing the county clerk to make an investigation concerning the right of the registrant to register or to refuse to accept such registration certificate has been conferred by statute. A provision is made, however, for the board of registration to cancel affidavits, and under § 46-3-1, any qualified voter, not later than ten days prior to the holding of a local option election, may apply to the District Court of the county wherein the election is to be held to correct or purge such registration book as herein provided.