

**Opinion No. 64-123**

September 24, 1964

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Jay F Rosenthal, Assistant Attorney General

**TO:** Alberta Miller, Secretary of State, State of New Mexico, Santa Fe, New Mexico

**QUESTION**

QUESTION

Are Federal Civilian employees who are nonmilitary personnel or their dependents and who are living on Sandia Base or Kirtland Air Force Base eligible to vote in Federal and New Mexico State Elections?

CONCLUSION

See analysis.

**OPINION**

ANALYSIS

Consideration of this question requires examination of certain New Mexico Statutes on elections and the New Mexico Consent statute giving the United States power to acquire land in New Mexico under the provisions of Article 1, Section 8, Cl. 17 of the United States Constitution. Section 3-14-13, N.M.S.A., 1953 Compilation (P.S.) provides:

"The making of an application for or the mailing of an absentee ballot by a person in the Armed Forces, a Federal Employee or a member of a religious or welfare group who is not registered, but is a qualified elector of New Mexico should constitute registration for the election for which the ballot is cast."

Section 3-14-12, N.M.S.A., 1953 Compilation (P.S.) in pertinent part provides:

"C. 'Federal Employees' means civilian employees of the United States in all categories serving outside the territorial limits of the United States and their spouses and dependents residing with or accompanying them."

Section 3-1-1, N.M.S.A., 1953 Compilation in pertinent part provides:

"Residents within the meaning of the above paragraph shall be residents on land privately owned, or owned by the State of New Mexico, any county or municipalities

thereof; or upon land originally belonging to the United States of America or ceded to the United States of America by the State of New Mexico, any county thereof, or any municipal corporation or private individual by purchase, treaty or otherwise."

Section 7-2-1.1, N.M.S.A., 1953 Compilation (P.S.) provides in part:

"In order to acquire all, or any measure of, legislative jurisdiction of the kind involved in article I, section 8, clause 17 of the Constitution of the United States over any land or other area, or in order to relinquish such legislative jurisdiction, or any measure thereof, which may be vested in the United States, the United States, acting through a duly authorized department, agency or officer, shall file a notice of intention to acquire or relinquish such legislative jurisdiction, together with a sufficient number of duly authenticated copies thereof to meet the recording requirements. . . ."

Generally the right to residents of military bases or Federal installations to vote depends primarily upon whether the Federal Government has acquired and continues to exercise exclusive jurisdiction over the area. If the Federal Government has exclusive jurisdiction over the land, the right to establish residency is lost, because the land in effect is no longer for this purpose "in New Mexico." If the State retains some elements of jurisdiction over the area, or if the Federal Government cedes some areas of jurisdiction back to the state, the residents may under some circumstances be able to meet the residency requirements so as to be qualified electors.

This matter was considered in **Arledge vs. Mabry**, (1948) 52 N.M. 303, 197 F. 2nd 884. In that case the right to vote in state elections by residents of Los Alamos was at issue. The New Mexico Supreme Court denied the elective franchise to these residents who resided on land acquired by the United States through condemnation proceedings, inasmuch as the Federal Government exercised exclusive jurisdiction over the area by virtue of the provisions of Article I, Section 8, Clause 17 of the United States Constitution and the New Mexico consent statutes, i.e., Sections 7-2-2 and 7-2-3, N.M.S.A., 1953 Compilation. The court held that the land acquired in this manner was not within the state for the purpose of fulfilling the qualifications of an elector entitled to vote for public officers. To regain jurisdiction of lands condemned in this so called "constitutional" method, the Court said the Federal Government must, by statute code back the area to New Mexico.

In the Arledge case, supra, the court allowed the franchise to persons residing on those lands which had been taken from the public domain, i.e., which had been acquired by the United States from Mexico in 1848 and had been used as a national forest. This holding was based on the New Mexico consent statute which the court said did not code exclusive jurisdiction to the United States of this land, and the Federal Government held and used it in a proprietary capacity only thus leaving it subject to state jurisdiction in matters not inconsistent with the use of the land by the government for purposes for which it was acquired. On these lands, residents could establish themselves as electors by remaining the required period as noted in Section 3-1-1, N.M.S.A., 1953 Compilation.

In conclusion, under the Arledge case, those people residing on land obtained by the United States through the Constitutional method may not establish their residency so as to become electors. Those residing on lands obtained by purchase without obtaining the consent of the state are in a similar position, the court in the Arledge case having held that the same consequences attach. Those residing on former public domain land may exercise the elective franchise in both state and federal elections. For election purposes these lands are within the state, since the state retained jurisdiction over the area not inconsistent with federal use. Note that under Section 7-2-1.1, supra, the United States can cede back to the state jurisdiction on some of these areas no matter how acquired.

Obviously, the result of the Arledge decision is to disenfranchise a large number of people. At page 321 the Court stated:

"As pointed out in a few of the so called "vote cases," particularly, In Re Town of Highlands, 22 N.Y.S. 137 and Herken v. Glynn, 151 Kans. 855, 101 P.2d 946, certain residents of the condemned area may still have a voting residence at the place of their former domiciles. New Mexico Const. Art. 7, § 1, provides that no person shall be deemed to have acquired or lost a residence by reason of his presence or absence while employed in the service of the United States or of the state, nor while a student at any school. Any residents of the condemned area in said precinct, to whom this constitutional provision applies as well as those from other states with like constitutional provision, and, indeed, aside from the effect of any such provision, where the only thing evidencing an intention to change a former voting residence has been the futile act of seeking to acquire one in this federal area, absent a fixed resolve to abandon the former residence at all events, may if otherwise qualified, cast his ballot at the place of former residence in person, where so required as in New Mexico; or, by absentee voting in states, where permissible."

Under the Voter Assistance Law, 3-14-11, et seq., which implements the Federal Voting Assistance Act of 1955, members of the armed forces who are not registered but are qualified electors of New Mexico shall be allowed to apply to the secretary of state for an absent voter's ballot. Note that "Federal Employees" are only allowed the same privilege if they are residing outside the territorial limits of the United States. Those federal employees residing on land not under the jurisdiction of the state, and who have given up their residence in their home states have lost their franchise.