

1956

Preston Allen v. Porter L. Merrell : Brief of Defendant

Utah Supreme Court

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In the
Supreme Court of the State of Utah

FILED

PRESTON ALLEN, suing for himself
and other American Indians similarly
situated,

Plaintiff,

vs.

PORTER L. MERRELL, individually
and as County Clerk, Duchesne
County, Utah,

Defendant.

NOV 17 1956
Clerk, Supreme Court, Utah

Case No.
8589

BRIEF OF DEFENDANT

E. R. CALLISTER,
Attorney General,

WALTER L. BUDGE,
Assistant Attorney General,

K. ROGER BEAN,
Assistant Attorney General,

Attorneys for Defendant.

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Case No.
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PORTER L. MERRELL, individually
and as County Clerk, Duchesne
County, Utah,

Defendant.

BRIEF OF DEFENDANT

STATEMENT OF FACTS

Defendant acknowledges the statement of facts contained in the brief of plaintiff as substantially true and adopts it for purposes of his argument herein.

STATEMENT OF POINTS

POINT I

IT IS THE PROVINCE OF THE INDIVIDUAL STATES TO GRANT OR WITHHOLD THE ELECTIVE FRANCHISE AND TO FIX THE QUALIFICATIONS OF VOTERS.

POINT II

PARAGRAPH (11), SECTION 20-2-14, UTAH CODE ANNOTATED 1953, IS A REASONABLE EXERCISE OF THE LEGISLATIVE POWER TO ESTABLISH VOTING RESIDENCE REQUIREMENTS AND CONTRAVENES NO PROVISION OF THE UNITED STATES CONSTITUTION.

- A. Applicable and Inapplicable Provisions of Federal Law.
- B. The Basis of the Exclusion is Federal Control and not Race or Color.
- C. Federal Control of Indians and Their Property.

POINT III

AN ACT OF THE LEGISLATURE IS PRESUMED TO BE CONSTITUTIONAL UNTIL SHOWN CLEARLY TO BE OTHERWISE, AND THE BURDEN OF PROOF IS ON THE PARTY CHALLENGING ITS VALIDITY.

ARGUMENT

POINT I

IT IS THE PROVINCE OF THE INDIVIDUAL STATES TO GRANT OR WITHHOLD THE ELECTIVE FRANCHISE AND TO FIX THE QUALIFICATIONS OF VOTERS.

It has long been a settled point in our law that it is the individual states, and not the United States, which grant the right of suffrage to their citizens. In *Minor v. Happersett*, 88 U. S. 162 (1875), the United States Supreme Court held that the State of Missouri had the right to specify which of its citizens should constitute its electorate, and that case has since been widely cited and consistently followed. In *United States v. Cruikshank*, 92 U. S. 542 (1876), for example, the Supreme Court stated succinctly that "The right to vote in the states comes from the states; * * *", and cited the *Happersett* case by way of authority. To the same effect is the language of *Pope v. Williams*, 193 U. S. 621 (1904), at page 632:

"The privilege to vote in any State is not given by the Federal Constitution, or by any of its amendments. It is not a privilege springing from citizenship of the United States. *Minor v. Happersett*, 21 Wall. 162. It may not be refused on account of race, color or previous condition of servitude, but it does not follow from mere citizenship of the United States. In other words, the privilege to vote in a State is within the jurisdiction of the State itself, to be exercised as the State may direct, and upon such terms as to it may seem proper, provided, of course, no discrimination is made between individuals in violation of the Federal Constitution."

Reference to further authority on this point seems unnecessary.

Since the state's constitutional or statutory law is the source of the elective franchise, the state may impose reasonable conditions upon its exercise. *State v. Holzmüller*,

5 Atl. 2d 251, 254; *People v. Lipsky*, 63 N. E. 2d 642, 645. The state may require as a prerequisite to registration the payment of a poll tax, *Breedlove v. Suttles*, 302 U. S. 277 (1937), *Pirtle v. Brown*, 118 Fed. 2d 218, or proof that the applicant for registration can read and write, *Allen v. Sharp*, 184 S. E. 27 (N. C. 1936), *Trudeau v. Barnes*, 65 Fed. 2d 563 (CA La. 1933), and it may, as expressed by the Illinois Supreme Court in *Clark v. Quick*, 36 N. E. 2d 563 (1941), impose necessary procedural requirements. At page 565, the court stated:

“Another preliminary observation will dispose of considerable argument in the briefs. A great deal is said on both sides concerning the right of every voter to express his will at the polls and it is clearly inferable from the arguments that this is considered to be an absolute right. It is enough to point out that it is not an absolute, but a conditional right. It is conditional, in some cities, upon previous registration; it is conditional upon not moving from one precinct to another within thirty days; it is conditional upon reaching the polling place while the polls are open, even though failure to do so might be entirely without fault on the part of the voter, and it is conditional in the case of absent voters, on the proper application being made within the proper time and in accordance with the statute. The right to vote is conditional upon many other things which might be mentioned and upon circumstances which may or may not appear to be within the control of the voter. No good purpose can be served by discussing any of the bad results which might follow from a failure to meet the conditions. No one doubts the legislative power to prescribe reasonable conditions and any fault which may be found with them

must be taken up with the legislative rather than the judicial branch of government."

In Utah, the right to vote is granted by Article IV, Section 2 of our Constitution. It reads:

"Every citizen of the United States, of the age of twenty-one years and upwards, who shall have been a citizen for ninety days, and shall have resided in the State or Territory one year, in the county four months, and in the precinct sixty days next preceding any election, shall be entitled to vote at such election except as herein otherwise provided."

But this court has made it clear that the right is not absolute, and that the legislature may enact reasonable qualifying provisions which must be complied with before the right may be exercised. In *Evans v. Reiser*, 78 U. 253, 2 P. 2d 615 (1931), at 2 P. 2d 624, this court said:

"* * * Thus while a person possessing the necessary qualifications has a right to vote, such right is not absolute. The Legislature may prescribe reasonable rules and regulations which must be complied with before the right becomes absolute. The right is to be exercised by means of a secret ballot, or other secret means. In order to carry into effect the constitutional provision requiring that secrecy in voting be observed, it is not only competent but it is the clear duty of the lawmaking power to enact such laws as will, in its opinion, effect that purpose. So long as the provisions enacted into law by the Legislature may be said to be reasonable, the plain duty of the courts is to give such provisions full force and effect, regardless of what views they may entertain about the wisdom of the law. * * *"

It remains, then, to examine the effect of paragraph (11), Section 20-2-14, Utah Code Annotated 1953, to see whether it is either unreasonable or in violation of some provision of federal law.

POINT II

PARAGRAPH (11), SECTION 20-2-14, UTAH CODE ANNOTATED 1953, IS A REASONABLE EXERCISE OF THE LEGISLATIVE POWER TO ESTABLISH VOTING RESIDENCE REQUIREMENTS AND CONTRAVENES NO PROVISION OF THE UNITED STATES CONSTITUTION.

A. Applicable and Inapplicable Provisions of Federal Law.

Plaintiff claims that the statute in question, Section 20-2-14, violates four provisions of the United States Constitution and two provisions of federal law: (1) The Privileges and Immunities Clause of Article IV, Section 2, (2) The Privileges and Immunities Clause of the 14th Amendment, (3) Equal Protection Clause of the 14th Amendment, (4) The 15th Amendment, and (5) 42 USC 1983 and 42 USC 1971.

Our attention is directed under Point I of the plaintiff's brief to a number of rights that are protected under the Privileges and Immunities Clause of Article IV, Section 2 of the federal constitution, but the right to vote is not one of them. The reason was explained by the United States

Supreme Court in *Minor v. Happersett*, 88 U. S. 162 (1875) *supra*, thusly :

“* * * By article 4, sec. 2, it is provided that ‘The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States.’ If suffrage is necessarily a part of citizenship, then the citizens of each State must be entitled to vote in the several States precisely as their citizens are. This is more than asserting that they may change their residence and become citizens of the State and thus be voters. It goes to the extent of insisting that while retaining their original citizenship they may vote in any State. This, we think, has never been claimed. * * *.”

To the same effect is *State v. Kirby*, 163 S. W. 2d 990 (Mo. 1942). See also 12 Am. Jur., Con. Law, Section 466.

Nor has the right to vote been considered one of the privileges and immunities protected by the 14th Amendment. See *Minor v. Happersett*, *supra*, *Pope v. Williams*, 193 U. S. 621, *supra*, and 12 Am. Jur. Con. Law, Section 466, *supra*.

In *Nixon v. Herndon*, 273 U. S. 536 (1927), the U. S. Supreme Court made the equal protection clause of the 14th Amendment the basis for a holding that a negro was entitled to vote in a primary election, but Indians patently are neither equally protected by state laws, nor equally responsible under them. They are protected instead by a host of federal laws, as will be pointed out in more detail, and it is therefore doubtful that the equal protection clause has any bearing on the problem before us. 25 USC 349 provides that after the fee patent in allotted lands passes

to an Indian, he is entitled to equal protection under state laws, and this seems to suggest that the equal protection clause is not presently applicable.

It is unnecessary to consider the statutory provisions plaintiff relies on since they are enacted pursuant to the constitutional provisions above referred to, and any efficacy they have is by virtue of said provisions. Further, the constitutional provisions cited are self-executing, as the plaintiff has pointed out in his brief, and therefore reliance upon such statutory measures seems unnecessary.

We come then to the 15th Amendment, and if there exists any conflict, it must be with this provision of the United States Constitution. Unless it abridges the right to vote on the basis of race, color, or previous condition of servitude, state action does not offend this amendment.

B. The Basis of the Exclusion is Federal Control and not Race or Color.

Plaintiff contends that the defendant has denied him the right to vote on the basis of race or color, and cites numerous cases holding this kind of conduct unconstitutional. We agree with the holdings of most of the cited cases, but they have no application here. There is not the least foundation for the claim that the plaintiff's action complained of herein was motivated by considerations of race or color. On the contrary, the defendant's written statement, quoted at page 4 of the complaint and page 5 of plaintiff's brief, shows that the basis of the defendant's action was that the plaintiff "lives on an Indian reservation and did not establish a residence in any other precinct in

the State of Utah prior to * * * his application for an absentee ballot. This action is in accordance with the provisions of paragraph (11), Section 20-2-14, U. C. A. 1953, which reads:

“(11) Any person living upon any Indian or military reservation shall not be deemed a resident of Utah within the meaning of this chapter, unless such person had acquired a residence in some county in Utah prior to taking up his residence upon such Indian or military reservation.”

It is conceded that persons disqualified on the basis of residence might all happen to belong to a particular race or be of a particular color, but that argument cannot be seriously advanced here. It is common knowledge in Utah that much of the Uintah-Ouray Reservation has been open to non-Indians for settlement (see brief of plaintiff, pp. 3-4) and that there are today more white persons residing on the reservation than there are Indians. And there can be no question that the statute under attack applies by its terms to white persons equally with Indians.

Additional evidence that the exclusion of the statute is not one of race or color but of residence, is the context in which it is found. It is grouped with the rest of the residence provisions, and logically follows that which precedes it. Further, the reference to “any person living upon any Indian * * * reservation” is side by side with a similar provision with respect to “any * * * military reservation”. When this fact is noted, the question then occurs whether the plaintiff would not be more consistent to allege also that the statute discriminates against unmarried en-

listed men, since they are ordinarily required to live within the confines of the military post, while officers and enlisted men with families are usually permitted to take up residence off the post and thus establish a voting residence. On the contrary, the plaintiff has found in his brief a basis of distinction between cases upholding the disfranchisement of residents of military reservations, but in fact there is no distinction. The crux of the question in both instances is federal control, and as will be later shown, the control applies with respect to the territory within the Indian reservation as well as within the military. There are appended hereto, as Exhibits A and B, copies of two Attorney General's opinions on the voting residence of persons residing on military reservations in Utah which we believe demonstrate the consistency of the state's application of the statute in question.

The plaintiff, however, finds fault with the opinion of the Attorney General attached to his brief as Appendix B. He points out at page 26 of his brief that the opinion mentions no other group or class except Indians and is applied to Indians alone, thereby discriminating against them. But he overlooks mentioning that the question was asked with respect to Indians only, and not to persons in general. The opinion seems somewhat less discriminatory when this point is considered.

This raises the question whether the plaintiff has not become confused in the object of his attack. It is not surprising that he prefers the opinions of Attorneys General Chez and Giles since they reach a conclusion which permits the plaintiff and those he represents to vote. But we are

unable to understand his approval of the method by which that conclusion was reached. At page 27 of his brief he sets forth some of the reasoning underlying that opinion and we agree that it has merit. We would acknowledge that the statute in question is over half a century in age, and that great strides have been made in that time toward lifting the Indians from the benighted state into which short-sighted federal policy has plunged them. But we think that legislation on the part of the Attorney General to accomplish the "modernization" of the statute is indefensible. If the English language is capable of conveying an idea clearly, it does so in this statute. The words are "*any* Indian or military reservation" (emphasis added). There is nothing in it about "open" or "closed" reservations. Had the legislature intended such a distinction to exist, there is every reason to believe it would have said so. No one will dispute that strong reasons impel us toward granting the vote to those who reside on Indian reservations, but amendment of statutes is a legislative function.

In truth, when the statute is applied as enacted, there is no discrimination against the Indians. If the defendant is permitting some white persons, who are not more qualified than the plaintiff and those in whose behalf he is suing, to vote since the issuance of the Attorney General's opinion (plaintiff's brief Appendix B), he might properly be restrained; however, nothing appears from the complaint herein to show that any white persons permitted by the defendant to vote had not established voting residences elsewhere in Utah before taking up residence on the reservation.

C. Federal Control of Indians and Their Property.

We have pointed out that the reasonableness of the distinction made in paragraph (11), Section 20-2-14, turns on the question of federal control. In *Herken v. Glynn*, 101 P. 2d 946 (Kan. 1940) the court dealt with the question whether those persons residing on a tract of federal government land set aside for a soldiers' home, were entitled to vote in Kansas. It concluded they were not so entitled, and in the course of the opinion stated:

“* * * In authorities treating the matter generally, it is said that where a cession of a tract is made by a state to the United States for the purposes mentioned in the above constitutional provision, and there is no reservation of jurisdiction by the state other than the right to serve civil and criminal process on the ceded lands, persons who reside on such lands do not acquire any elective franchise as inhabitants of the ceding state. See McCrary on Elections, 4th Ed. § 89, p. 68; Paine on Elections, § 63, p. 44; Kennan on Residence and Domicile § 493, p. 844; 20 C. J., Elections, § 33, p. 74; 18 Am. Jur., Elections, § 66, p. 224.”

Similar holdings on this point are found in *State v. Smith*, 103 N. E. 2d 822 (Ohio 1951) and *Arlledge v. Mabry*, 197 P. 2d 884 (N. Mex. 1948). In the latter case the court found that the involved land was not in New Mexico for voting residence purposes.

The enabling act admitting Utah to the union is of some interest at this point. Part of Section 3 reads as follows:

“Second. That the people inhabiting said proposed State do agree that they forever disclaim all

right and title to the unappropriated public lands lying within the boundaries thereof; and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States; that the lands belonging to citizens of the United States residing without the said State shall never be taxed at a higher rate than the lands belonging to residents thereof; that no taxes shall be imposed by the State on lands or property therein belonging to or which may hereafter be purchased by the United States or reserved for its use; but nothing herein, or in the ordinance herein provided for, shall preclude the said State from taxing, as other lands are taxed, any lands owned or held by any Indian who has severed his tribal relations and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any Act of Congress containing a provision exempting the lands thus granted from taxation; but said ordinance shall provide that all such lands shall be exempt from taxation by said State so long and to such extent as such Act of Congress may prescribe."

No clearer relinquishment of state control over territory can be imagined, and except for those portions actually ceded back to the state or granted in fee to Indians or other persons the territory within the reservation remains subject to federal control. Any land granted in fee or returned to private or state ownership by any means is granted or returned in accordance with terms fixed by Congress and

administered by the Secretary of the Interior at their pleasure. It is a fact that title to the land upon which the plaintiff resides is in the United States.

It is suggested in the plaintiff's brief that because of recent federal legislation granting new privileges to and removing certain restrictions from many tribes of Indians, they are pretty much like any other citizens of the State of Utah. We wish it were so, but a quick reading of Title 25, USCA creates a different impression. Apparently the U. S. government does not believe the Indians are as close to the complete independence they so long have deserved as this court is asked to believe. Tribal Indians plainly are not on the same basis with other residents of the State in the matters of taxation by the state, subjection to state criminal laws, control over contractual matters and control and disposition of real and personal property. See, for example, 25 USC 465 on the tax status of lands acquired by the Secretary of Interior for the use of Indians; Section 412a of the same title on the tax status of Indian homesteads; Section 349 on the availability of patented land for the satisfaction of debts incurred prior to the issue of the patent; Section 371 on the descent of Indian property to children of a marriage "according to the custom and manner of Indian life"; Sections 671 and 677 et seq. (USC Supp. III) on control of contractual relations; 18 USC 1151 and 1154, and Section 3242 on criminal jurisdiction; and 18 USC Sections 1162 and 1360 (Supplement III) on the granting of criminal and civil jurisdiction over Indians to certain states, but not to Utah.

It cannot be denied that although progress is being made toward independence, tribal Indians are still wards of the government. Congress has established an Indian claims commission. There is a separate bureau—the Bureau of Indian Affairs—within the Department of Interior, and a separate title in the U. S. code for legislation pertaining especially to Indians.

In plaintiff's brief, considerable reliance is placed on the decision in *Harrison v. Laveen*, 196 P. 2d 456 (Ariz. 1948). There was involved in this case a provision of the Arizona constitution which denied persons under guardianship the right to vote. We are not dealing with such a provision here, and that decision consequently is not dispositive of this case. It is, however, informative with respect to the status of Indians generally. We quote from page 459:

“It would be idle to contend that tribal Indians do not still occupy a peculiar and unique relationship to the federal government. They are, except for a few civilized tribes, still regarded and treated by the United States as requiring special consideration and protection. For nearly a century they were treated as separate ‘nations’ and the legal rights of the members were fixed by treaty. Many of these treaties are still in force and of recognized validity. However, Congress stopped making such treaties in the year 1871, but since then more than four thousand distinct statutory enactments have been passed by the Congress comprising what is commonly referred to as ‘Indian Law’. Many of the Federal enactments arise from the express grant to Congress found in article 1, section 8, cl. 3 of the Constitution of the United States; ‘to regulate Commerce * * * with the Indian Tribes;’. Generally speaking tribal In-

dians are not subject to State law. The exemption is particularly true in the fields of criminal law and taxation."

See also *Porter v. Hall*, 271 Pac. 411 (Ariz. 1928).

The exclusion resulting from Paragraph (11), Section 20-2-14 is a reasonable one based on federal control over the persons and property involved, and has no relation to race or color.

POINT III

AN ACT OF THE LEGISLATURE IS PRESUMED TO BE CONSTITUTIONAL UNTIL SHOWN CLEARLY TO BE OTHERWISE, AND THE BURDEN OF PROOF IS ON THE PARTY CHALLENGING ITS VALIDITY.

There is a presumption of constitutionality in favor of every statute duly enacted by the legislature. *Norville v. State Tax Commission*, 98 U. 170, 97 P. 2d 937 (1940), *Gubler v. Utah State Teachers' Retirement Board*, 192 P. 2d 580 (Ut. 1948). In the latter case, the principle was expressed thus:

"There are certain fundamental principles which must be taken into consideration by this court before we strike down an act of the Legislature. Quoting from Section 39, Black's Handbook of Constitutional Law: 'Every presumption is in favor of the constitutionality of an act of the legislature. * * * Every reasonable doubt must be resolved in favor of the statute, not against it; and the courts will not adjudge it invalid unless the violation of

the constitution is, in their judgment, clear, complete, and unmistakable.' ”

In view of the presumption, the party asserting invalidity must clearly show the alleged conflict between the statute and the constitution, and prove its existence beyond all doubt. 11 Am. Jur. Con. Law, Section 132. The plaintiff has failed to sustain that burden in this case. He has argued that the legislation is out-dated, and we agree that there is some basis for this view. He has also demonstrated the need for legislative reform through the policy arguments he has advanced. But he has failed to show any discrimination against the plaintiff or those similarly situated on the basis of race or color in violation of the 15th Amendment to the United States Constitution or any other provision thereof.

CONCLUSION

The alternative writ should be quashed and the complaint dismissed.

Respectfully submitted,

E. R. CALLISTER,
Attorney General,

WALTER L. BUDGE,
Assistant Attorney General,

K. ROGER BEAN,
Assistant Attorney General,

Attorneys for Defendant.

APPENDIX A
OFFICE OF THE ATTORNEY GENERAL
STATE CAPITOL
SALT LAKE CITY 14, UTAH

56 058

June 1, 1956

Tooele County Commission

REQUESTED BY: Willard H. Sagers, Clerk, Too-
ele County Commission

OPINION BY: E. R. Callister, Attorney Gen-
eral

Walter L. Budge, Assistant
Attorney General

QUESTIONS:

1. Is it legal for the Tooele
County Commission to estab-
lish a voting district at Dug-
way Proving Grounds?

2. Is it legal for a person liv-
ing at Dugway Proving
Grounds to vote at a near-by
voting precinct if a voting dis-
trict is not established on the
post?

3. A gentleman has lived at
Dugway since coming to Amer-
ica several years ago and is
now a naturalized American
citizen. Where will he be eli-
gible to register and vote?

CONCLUSIONS:

1. No.
2. No, but see opinion.
3. See opinion.

Title 20, Chapter 2, Utah Code Annotated 1953, pertains to registration for elections. Section 14 thereof provides in part as follows:

“For the purpose of registration or voting, the place of residence of any person must be governed by the following rules as far as they are applicable:

1. That place must be considered and held to be the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

2. A person must not be held to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States or of this state * * * or while residing upon any * * * military reservation.

* * * *

5. A person must not be considered to have gained a residence in any county to which he comes merely for temporary purposes, without the intention of making such county his home.

* * * *

9. A change of residence can only be made by the act of removal, joined with the intent to remain in another place. A residence cannot be lost until another is gained.

* * * *

11. Any person living upon any * * * military reservation shall not be deemed a resi-

III

dent of Utah within the meaning of this chapter unless such person had acquired a residence in some county in Utah prior to taking up his residence upon such * * * military reservation.

The Dugway Proving Grounds is a United States Military Reservation. The situation here is not analagous to one arising under the Lanham Act, Public Law No. 849, 76th Congress, 54 Stats. 1125, for under that act the Congress of the United States expressly preserved the "civil rights of inhabitants of such public housing projects", and it has been held that the "civil rights therein, expressly preserved, included the political right of suffrage". *Johnson vs. Morrill*, 126 P. 2d 673, *State vs. Corcoran*, 128 P. 2d 999. The Lanham Act and the cases first above cited, had to do with federal lands which were not upon a military reservation. That fact is material.

Where the State cedes the realty to the United States, as is the case at Dugway, and it becomes a "military reservation", there remains no right to vote at election precincts established on the realty prior to the cession. In so holding, we follow the authority laid down in the case of *Herken vs. Glynn*, 101 P. 2d 946, 151 Kan. 855, wherein that court said:

"Residence on the realty in Leavenworth County, Kansas, whereon the National Home for Disabled Volunteer Soldiers was established by the United States after the state ceded the realty to the United States, had no right to vote at election precincts established on the realty prior to the cession; the right to vote not being a 'municipal right' so as to persist after cession."

IV

Jurisdiction over the Dugway Proving Grounds rests in the United States, and the State of Utah has retained only its right of process, civil and criminal.

“Where a state cedes to the United States lands for forts, etc. reserving concurrent jurisdiction to serve state process, civil and criminal, in the ceded place, such reservation merely operates as a condition of the grant and does not defeat the exclusive jurisdiction of the United States over such place * * *.”

14 Am. Jur., page 924 35 et seq.

Following the above authorities, we are constrained to here declare that the Tooele County Commissioners cannot legally establish a voting district at Dugway Proving Grounds on realty ceded to the United States and under the jurisdiction of the federal government.

Question No. 2: A person living at Dugway Proving Grounds would not be eligible to vote at a near-by voting precinct off the reservation unless and until he could qualify and be eligible to prescribe to the oath required by Section 20-2-11, U. C. A. 1953. It would be mandatory that he swear that he *resided in such election district* at the time he took the registration oath. If a person had a right to vote in the State of Utah and had acquired a residence in some county prior to taking up his residence on the military reservation, he would not have lost that residence by reason of his presence on the reservation. See 20-2-14(2) *supra*. Such a person would retain his right to vote at his established residence in Utah. This resolves your question No. 2.

Question No. 3: If the gentleman you refer to lived at Dugway and was naturalized prior to the cession of those lands to the United States, he would

be eligible to vote in Tooele County, providing he met the requirements of Section 20-2-20, *supra*, and could under such section transfer to a lawful voting precinct but he would, of course, have to reside in the election district in which he desired to vote so that he could subscribe to the registration oath. If the gentleman became a naturalized American citizen after the realty at Dugway Proving Grounds had been ceded to the federal government, he would not be able to gain a residence for the purpose of registration or voting while continuing to reside upon the military reservation, Section 20-2-14(2), (9) and (11) *supra*.

We are not unmindful of the pronouncement of the Utah Supreme Court which declares that our election laws seek liberality of interpretation against disenfranchisement, *Clegg vs. Bennion*, 247 P. 2d 614, 615, ... Ut. However, there is absolutely no ambiguity in the wording of the statutes hereinabove set forth, and it has been, and remains, the opinion of this office that a person living upon and within the confines of a military reservation may not establish a residence for voting purposes unless such person had previously acquired a voting residence in some county in Utah prior to taking up his residence thereat.

Enlarging upon our letter addressed to you under date of August 29, 1954, we do here state that a person having previously acquired a voting residence in Utah or elsewhere would not, by residing upon a military reservation, have lost such residence, and that such a person would and should be able to vote at his former residence according to the laws of Utah or of his place of former residence wherever that might be by absentee ballot or as otherwise by law provided.

To be a qualified elector in this state, or as far as the writer knows, in any other state, a voter must comply with the election laws and fully meet requirements thereof. It has long been in this nation the fact that some of the citizens have been disenfranchised by reason of their residence at particular places, so we are not here dealing with a new or unique situation. We have reference to the District of Columbia, (where this was until very recently the fact), to the Military Reservation at Fort Douglas, and to many other federally controlled lands and installations throughout the country.

Very truly yours,

E. R. CALLISTER

Attorney General

WLB/jt

APPENDIX B
OFFICE OF THE ATTORNEY GENERAL
STATE CAPITOL
SALT LAKE CITY 14, UTAH
August 31, 1956

Mrs. G. F. Burnett
487 East 200 South
Clearfield, Utah

Dear Mrs. Burnett:

In reply to your letter of August 29, 1956, be advised that Section 20-2-14, U. C. A. 1953, paragraph 11, reads as follows:

“Any person living upon any Indian or military reservation shall not be deemed a resident of Utah within the meaning of this chapter, unless such person had acquired a residence in some county in Utah prior to taking up his residence upon such Indian or military reservation.”

Under the foregoing section a person living on a military reservation cannot vote in the state of Utah unless they have qualified to vote before moving to the reservation.

The statutes of our state further require that a person must be a resident of the state for at least one year before he can register and vote and must have resided in one certain county for three months prior to registration.

The only way either one of these matters can be changed is by having the Legislature change the law.

Very truly yours,

PETER M. LOWE
Deputy Attorney General

PML/jlt

