Opinion No. 56-6425

April 20, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. C. C. Chase, Jr., District Attorney, Third Judicial District, Second Floor County Court House, Las Cruces, New Mexico

You have presented for our opinion the question:

May "residence" for voting purposes be acquired within the Wherry Housing Areas at White Sands Proving Grounds and Holloman Air Force Base?

Your question cannot be answered categorically. There are various ramifications to this question, and more information than you submit in your request is needed before this question can be fully and completely answered. However, we, nevertheless, undertake to outline the law on the subject in order that upon your further investigation of the factual situation the law as hereafter set out may be applied by you.

The case of Arledge vs. Mabry, 52 N.M. 303, decided on September 21, 1948, is, on this subject, our landmark case. In that case, as you know, it was pointed that:

"There are three principal methods by which the United States may acquire land within a state. First, the method known as the constitutional method, as provided by Clause 17, § 8, Art. 1, of the federal constitution. Second, by purchase without obtaining the consent of the state. Third, where the land acquired by the government was the property of the state, such acquisition being by a cession by the state to the federal government in the nature of a gift."

After pointing out the above the Court held 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.

It was further held that upon lands within these installations which formerly were a part of the public domain, "residence" for voting purposes could be established thereon. The reasoning behind this conclusion is that the State of New Mexico, as to these lands, exercised concurrent jurisdiction with the Federal government even though title was held by the Federal government. And, that when parts of these lands were taken over to place these installations thereon the title still remained in the United States Government, but concurrent jurisdiction also remained although the use changed.

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 purposes cannot be established.

It should further be pointed out that Arledge vs. Mabry, supra, held that any votes cast within condemned lands or lands acquired by purchase wherein the government exercised exclusive jurisdiction, were not votes legally cast within this State. If within the subject installations it is found that land exists which was formerly a part of the public domain and that people have acquired residence thereon, you should make certain that the polling places for the people living on these lands be upon them and not upon lands which might have been acquired by the United States Government by condemnation or purchase.

In passing, it may be noted that Section 3-1-1, N.M.S.A., 1953, in the third paragraph, provides that:

". . . Residence within the meaning of the above paragraph shall be residence upon land privately owned, or owned by the state of New Mexico, any county or municipalities thereof; or upon lands 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. . . ."

At first blush it would appear that the above would cover lands purchased or condemned by the United States Government and that the statute would allow acquisition of "residence" within these lands. It will be noted that the opinion in Arledge vs. Mabry does not treat in any respect the provision above, and does not give us an indication as to its true meaning. However, I have checked the briefs in that case and in one of them it was suggested that the statutory provision above permitted acquisition of "residence" upon lands condemned or purchased. The question was thus squarely presented to the Court. The Court's silence upon this statute would therefore seem to indicate that the Court felt that the statute did not have such a meaning. Thus we conclude that the law exists as set out in Arledge vs. Mabry, Section 3-1-1, and its apparent implication to the contrary notwithstanding.

This office on November 4, 1953, rendered its Opinion No. 5841 touching upon the same problems presented by you. Without going into that opinion at length we conclude that some of the rulings there and the interpretation placed upon Arledge vs. Mabry, supra, were, to a certain extent, erroneous and that opinion where it conflicts with this one is to that extent modified.

One further problem remains. Since some of the people living within these installations are military personnel, the further question is presented as to whether or not these may acquire residence if they live upon lands where "residence" for voting purposes may be acquired. This office has previously ruled on this question. I am enclosing copy of Attorney General's Opinion No. 4549 dated July 18, 1944, which discusses acquisition of residence by soldiers and other military personnel living within this State.

I trust the above helps answer your inquiries.

By: Santiago E. Campos

Assistant Attorney General