

Opinion No. 21-2887

April 2, 1921

BY: HARRY S. BOWMAN, Attorney General

TO: Mr. John Montoya, Judge of Election, Velarde, N. Mex.

Qualification Electors at School District Elections.

OPINION

{*39} Replying to your oral request for an opinion regarding the qualifications of voters at the district school election to be held on the 4th instant, and submitting several inquiries concerning such qualifications, I would advise you as follows:

You ask if a person may vote in a district other than that in which he resides because of his having formerly been in the service of the United States as a soldier.

The qualifications for voters at all elections are prescribed by Sec. 1 of Art. 7 of the Constitution. That section provides that

"Every male citizen of the United States who is over the age of 21 years and has resided in New Mexico 12 months, in the county 90 days and in the precinct in which he offers to vote 30 days next preceding the election, shall be qualified to vote at all elections for public officers."

I understand that you have three school districts within the boundaries of one county precinct. The question arises upon the right of the soldier to vote at any one of the districts located within the precinct.

{*40} Sec. 4852, Code of 1915, in the last paragraph provides that all legal voters **residing in a school district** shall be considered qualified voters of said district entitled to vote therein.

This section of the Code must be considered in connection with the provisions of the Constitution above quoted, as no law would permit a person to vote in more than one district, even though there were several districts within the exterior boundaries of the precinct. Taking the constitutional and statutory provisions and construing them together, you will note that it is necessary for a person to "reside" in a school district before he shall be qualified to vote therein.

There is no exception made for persons who have served in the army of the United States and therefore the soldier must vote in the district in which he resides. He has no right to vote in any other school district.

You next inquire if a person who is serving as Postmistress would be entitled to select the district in which to cast her vote at such school election.

The same provisions would apply to her as to the soldier above mentioned. Service as Postmistress in the United States Postoffice does not grant the person so serving any different rights, or prescribe any different qualifications as a voter than those for any other person casting his vote at such election.

You also inquire what constitutes residence in order to qualify a person to vote. The matter of residence is one entirely of intention, and a person is entitled to reside at any place where he may so desire. The intention regarding residence, however is to be ascertained by the acts of the person, and anyone who has voted at a recent election in one district or precinct and still resides in that district or precinct would be construed to reside in that district, and would not be permitted to journey to another precinct to cast his vote.

Judges of election are required by law to reject any votes which in the opinion of the majority of such judges are not legally entitled to be cast, and they should mark on the back of the ballot the name of the person voting, and the persons for whom the vote is cast, and mark opposite the name of each (that is the person voted for and the voter) the word "rejected."

In counting the votes such rejected votes should not be counted for any candidate. I would suggest also that you mark on the outside of the ballot the word "rejected" in case any such rejected ballots are attempted to be cast by any voter at the election to be held April 4th.

You also request advice regarding the right of a person to vote who resides in one of the districts during one part of the year and in another one of the districts during the remainder of the year, both of which districts are within the same precinct.

The intention of the voter would again prevail in such a case. If she claims her voting residence in one district she should be entitled to vote therein so long as she has not done anything or performed any act that would indicate that she intended to maintain her voting residence in the other district.