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FILE NO. S-822

ELECTIONS:

Residency -
Job Corps Trainee

Honorable James G. Gullett
State's Attorney
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Elizabethtown, Illinois 62931

Dear Mr. Gullett:

I have your letter wherein you state:

"I respectfully request an opinion from you concerning the eligibility of a Job Corp trainee voting in the county where the Job Corp facility is located. My question is this: Is a boy who enrolls in the Federal Job Corp Program on attaining the age of 18 a resident of the county in which the Job Corp Camp is located so as to enable him to register and vote in that county at a general election, although he came from another county and where the maximum time that he can remain in the Job Corp is only two years? The Federal Job Corp authorities of the Federal Job Corp has the

Honorable James G. Gullett - 2.

right to return said trainee to his home at any time or to terminate his participation."

As you know, the voting age was lowered to 18 years or older by the twenty-sixth amendment (XXVI) to the United States Constitution.

Absent a compelling-State-interest, durational residence as a prerequisite to voting registration is a violation of the equal protection clause of the fourteenth amendment of the United States Constitution. (Dunn v. Blumstein, 405 U.S. 330, 92 S. Ct. 995, 31 L. Ed. 2d 274 (1972).) Thus, the six months and 30 day durational residence requirements provided for in section 1 of article III of the Illinois Constitution of 1970 and sections 3-1 and 4-2 of the Election Code (Ill. Rev. Stat. 1973, ch. 46, pars. 3-1 and 4-2) are unconstitutional and of no effect.

The unconstitutionality of durational residence as a voting qualification does not affect the validity of a cessation of voting registration at a reasonable time prior to the election. See, Ill. Rev. Stat. 1973, ch. 46, par. 4-6.

States, of course, do have the power to require

Honorable James G. Gullett - 3.

potential voters to be bona fide residents of the relevant election district. (Dunn v. Blumstein, 405 U.S. 330, 343, 92 S. Ct. 995, 31 L. Ed. 2d 274 (1972).) Thus, in order to register to vote, the applicant must be a bona fide resident of the State of Illinois and the specific election district wherein the individual is attempting to register.

Residence is a term with an elusive legal meaning. In Illinois, however, it is settled that residence, for purposes of voting registration, means a permanent abode. Ill. Rev. Stat. 1973, ch. 46, pars. 3-2 and 4-2; Johnson v. People, 94 Ill. 505; Pope v. Bd. of Election Commissioners, 370 Ill. 196, 200.

In Pope v. Bd. of Election Commissioners, 370 Ill. 196, a man who practiced law in Illinois, owned property in Illinois, paid taxes in Illinois, and registered his automobile in Illinois was not allowed to register to vote because he lived in an apartment in St. Louis. His home or abode was not in Illinois, therefore, he was not a resident of Illinois.

One does not lose a residence by temporary removal

Honorable James G. Gullett - 4.

with the intention to return, or even with a conditional intention of acquiring a new residence, but when one abandons his home and takes up his residence in another county or election district, he loses his privilege of voting in the district from which he moved and gains the privilege of voting at his new residence. Park v. Hood, 374 Ill. 36, 43.

As was said in the landmark case of Kreitz v.

Behrensmeyer, 125 Ill. 141, 195:

"We have frequently held, that when a party leaves his residence, or acquires a new one, it is the intention with which he does so that is to control. Hence, the shortest absence, if at the time intended as a permanent abandonment, is sufficient, although the party may soon afterwards change his intention; while, on the other hand, an absence for months, or even years, if all the while intended as a mere temporary absence for some temporary purpose, to be followed by a resumption of the former residence, will not be an abandonment."

It follows that once there is an abandonment, and the intention not to return is later conceived, residence is lost.

The intent of the prospective voter is obviously important in determining whether he is a resident of the

Honorable James G. Gullett - 5.

relevant election district. The prospective voter must not only have an abode within the election district but he must intend to permanently reside within the district. He must have completely abandoned his former residence. As was stated by the Illinois Supreme Court in Stein v. County Board of School Trustees of DuPage County, 40 Ill. 2d 477, 480:

"Intent is gathered primarily from the acts of a person. As pointed out in the Kreitz case, declarations are admissible 'although less weight is given to the party's declarations than to his acts.'" (citation omitted.)

For voting purposes, "residence" and "permanent abode" are synonymous. Such permanency, however, does not mean a fixity for all time. It means rather a present intention of permanency and the lack of a present contrary intention. See, Hughes v. Illinois Public Aid Commission, 2 Ill. 2d 374, 381.

In answer to your question, a job corps trainee, living in a job corps camp within Hardin County and otherwise qualified to vote, may register to vote within Hardin County

Honorable James G. Gullett - 6.

if he has completely and permanently abandoned his former residence and intends to permanently reside within Hardin County.

Very truly yours,

A T T O R N E Y G E N E R A L