(2) Legislature has provided means for those entitled to exemption to secure refunds. This statute must be followed.

INQUIRY

CARSON CITY, August 21, 1928.

Referring to a decision of the Supreme Court of the United States, dated May 14, 1928, in the case of Panhandle Oil Company v. State of Mississippi, in which it was held that the States could not demand payment of tax on sale of gasoline made to the various branches of the United States Government, we are asking for a decision of the following:

(1) Does this apply in Nevada to motor-driven vehicles owned by the Federal Government and having attached thereto the United States license plate?

(2) Does this also apply in Nevada to motor-driven vehicles privately owned by officials and employees of the Federal Government having a State license plate attached thereto and presumably used in performing their duties for the Federal Government?

(3) Referring to section 4 of the gasoline tax law of Nevada granting refund of this tax and how the same may be procured, can the enforcement department, having to do with the collection of this tax, issue a certificate of exemption, to be signed by government officers or employees who purchase gasoline from time to time and pay cash, enabling them to get such gasoline exempt from the State tax at the time of purchase, and such coupons to be returned to the State by the dealer?

OPINION

(1, 2) As stated by you, the Supreme Court of the United States in the case of Panhandle Oil Company versus the State of Mississippi ruled that, under a statute similar to the Nevada Act, sales of gasoline made to Government agencies were exempt from tax payments. It was further decided that, while the Act in terms provided that the dealer or seller under the statute was required to pay the tax, a sale or purchase constituted a transaction by which the tax is measured and on which the burden rests, and that the operation of the Act directly retarded, impeded, and burdened the United States of its constitutional powers.

It must be concluded, therefore, that the Nevada Gasoline Tax Act does not apply to sales made to Government agencies.

(3) The Legislature of this State, under the provisions of section 4 of the Gasoline Tax Act, has provided a method by virtue of which those who are entitled to exemptions on gasoline sales may have the money so paid refunded. The Legislature has designated the Nevada Tax Commission as the agent before whom the proper affidavits must be filed, reciting the facts necessary to warrant the exemption.

To issue certificates of exemption indiscriminately to Government officers or employees would be violating the provisions of our law and setting up a method contrary to law in the matter of granting exemptions.

It will be necessary, therefore, for those engaged in Government service and who are acting as agents for the United States to pay the tax in the first instance and submit to the Nevada Tax Commission, in support of their exemption claim, an affidavit reciting facts

establishing that the gasoline so purchased was used by them for and on behalf of the United States.

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

NEVADA TAX COMMISSION, *Carson City, Nevada.*

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SYLLABUS

**316. Elections—Election Precinct May Be on Indian Reservation—Government Employees Cannot Be Election Officers—Government Employees Right to Vote Depends upon Residence—Illiterate Voters Cannot Be Assisted in Voting.**

(1) An election precinct may be established on an Indian Reservation.

(2) Persons holding lucrative offices with the Government cannot act as State election officers.

(3) Whether Government employees of an Indian Reservation can vote thereon depends upon matter of residence.

(4) Illiterate voters may not be assisted in marking their ballots.

INQUIRY

CARSON CITY, September 1, 1928.

(1) Is it legal to hold the polls of a given precinct within the established boundaries of a Government Reservation?

(2) Can government employees or officials act as election officers?

(3) Can such Government employees legally register and vote at State and county elections?

(4) In view of the provisions of section 45, Statutes of Nevada 1917, page 358, can illiterate voters receive assistance in marking their ballots by claiming to be physically disabled?

OPINION

Within the State of Nevada there have been established by Executive Order several Indian Reservations. In considering the first question, I assume that election precincts have been established upon Indian Reservations by the several Boards of County Commissioners in accordance with the provisions of section 2 of the General Election Laws, and that your question is directed to the legality of such action because it authorizes polling places within the boundaries of Indian Reservations.

By Opinion No. 247, we ruled that an Indian residing upon the Pyramid Lake Indian Reservation for the required period of time, with the intent to make such place his permanent domicile, was entitled to vote. This opinion was grounded upon the theory that

the land within the confines of this reservation was Nevada territory and that residence thereon for the required time was a residence within the State of Nevada.

A correct answer to your first question requires, therefore, a determination of the legal status of Indian Reservations in this State and whether the State of Nevada has the power to include them within the political subdivisions of this State for governmental purposes.

The Legislature of the State of Nevada, in authorizing the establishment of election precincts within the State of Nevada, excludes no part or portion of the territory embraced within the boundaries of the State as established by the Constitution. Section 2 of the General Election Law authorizes the Board of County Commissioners of the several counties to establish precincts and define the boundaries thereof. The several Indian Reservations located in this State are situated in the several counties of the State.

By an Act of Congress organizing the Territory of Nevada, all land between certain boundaries was included within the Territory of Nevada, "excepting such land as may be embraced within treaties existing between the Government and the several Indian tribes," and such land was excluded. That no treaties existed with any Indian tribes that would work an exclusion of any of the territory within the boundaries of Nevada is disclosed by the fact that neither the Enabling Act nor the Constitution of Nevada contained any provision excluding from the operation of the State government any area within the boundaries as defined. When the State was, therefore, admitted to the Union, Congress did not, by any declaration, reserve Indian lands to its exclusive jurisdiction.

The Supreme Court of the United States, passing upon the status of Indian Reservations and the right of the State to exercise jurisdiction, said:

> Whenever, upon the admission of a State into the Union, Congress has intended to except out of it an Indian Reservation or the sole and exclusive jurisdiction over that reservation, it has done so by express words.

In Opinion No. 208, Opinions of the Attorney-General, 1925-1926, we held that:

> The criminal jurisdiction of the State and all criminal laws or laws applicable to crime extend over both Indians and white persons, whether within or without an Indian Reservation with one exception, that is, for an offense committed on an Indian Reservation by one Indian against the person or property of another Indian.

citing sec. 6270, Revised Laws, 1912; State v. Johnny, 29 Nev. 203; State v. Buckaroo Jack, 30 Nev. 326; State v. Crosby, 38 Nev. 389.

It must logically follow, therefore, that the territory upon which Indian Reservations are located constitutes a part of the State of Nevada, and the State has the right to extend to its citizens, lawfully upon such Indian lands, all the privileges and immunities arising by reason of the laws of this State where the same in no manner conflict with the reserved jurisdiction of the United States.

The Supreme Court of Nebraska passed upon the right of the State to establish polling places on Indian Reservations and, in the case of State v. Norris, 55 N.W. p. 1087, said:

> Are the votes cast by these Indians to be rejected because the polling places at which they were cast were located on their reservations? Relator insists that neither the State of Nebraska nor the county of Thurston had any jurisdiction over these reservations; that the establishing of election precincts, and holding elections thereon, were illegal, and the votes cast

> thereat should be thrown out. In Painter v. Ives, 4 Neb. 128, it was said by Chief Justice Lake: "It would seem clear that, at the date of the State's admission into the Union, every portion of the territory within the prescribed boundaries thereof, the Indian Reservations inclusive, became subject to its laws." We think this is correct. The county of Thurston, in which these reservations lie, is one of the duly organized political subdivisions of the State. The county authorities were invested by law with the duty of establishing voting places therein, and of holding elections. The fact that one or more of the places of voting happened to be on an Indian Reservation in the county should not disfranchise the voters. That the title to these reservations is in the United States, and the lands are occupied by the Indians, sometimes denominated "wards of the Nation," does not give the United States exclusive jurisdiction of the territory. The jurisdiction of the Nation over the Indian, in his tribal relation, is supreme and exclusive; but when an Indian becomes a citizen of the United States, within the provisions of the Acts of Congress, he becomes subject to the laws of the State of which he is a resident, and entitled to the benefits of the laws of such State. The State also has jurisdiction over all the territory within its boundaries, for the government and protection of its citizens and their property, and the enforcement of its laws.

If therefore, by reason of existing facts, the establishment of an election precinct under section 2, General Election Law, is warranted, the further fact that the designated location of such precinct is on an Indian Reservation presents no legal or lawful objection.

(2) Section 9 of article IV of the Constitution of the State of Nevada declares, in substance, that no person holding any lucrative office under the Government of the United States shall be eligible to any civil office or board in this State.

If the Government employees or officers mentioned in your inquiry hold lucrative offices with the Government of the United States, I am inclined to the view that they cannot legally act as election officers.

(3) By the words "such Government employees" used in question No. 3, I apprehend that you refer to Government employees residing upon Indian Reservations and that their residence upon the reservation for the statutory period is relied upon to qualify them for registration and voting purposes.

That a residence, as defined in the Constitution, may be established upon an Indian Reservation is implied by the answer to question 1. It is only necessary, therefore, to determine if there exists any legal objection to the acquisition of a residence on a reservation by Government officers.

If Government officers, prior to employment, were residents of this State and registered voters in a precinct and county, the induction into office and residing at places of employment, under section 9, article IV of the Constitution, by the fact alone of such residence would not work a forfeiture of the right to vote at the former domicile. Where Government officials or employees assert the right to register and vote, based upon residence acquired by residing upon Government Reservations, a different question is presented.

The Constitution of the State of Nevada, section 2 of article II, provides:

> For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of the United States or of the high seas; nor while a student of any seminary of learning; nor while kept at any almshouse or other asylum, at public expense; nor while confined at any public prison.

The same provision is contained in the Constitution of the several States of the Union. The courts of last resort of these States are not uniform in their decisions in construing the meaning and effect of this section. The Supreme Courts of Idaho, Michigan, Kansas, and New York have ruled that, under this section, persons in almshouses or other asylums are, by reason of this section of the Constitution, prohibited from establishing a residence at the places where the asylums are located and could only vote at their places of residence before becoming such inmates. The Supreme Court of Kansas at a later date reversed its former ruling, and the courts of Kansas, Oregon, and California hold that, under this section of the Constitution, inmates of asylums may acquire a residence at the asylum where that is their intention.

The Idaho case made no distinction in the several classifications referred to in the Constitution but held that:

> When it declares that no one, by reason of presence or absence in certain service, or at certain institutions, shall be regarded or deemed to have gained or lost a residence for the "purpose of voting," it is only meant that whoever enters such service or such institution, if he votes while in such service or institution, must do so at the place where he was entitled to vote at the time he entered such service or institution. Any other interpretation of the language of the Constitution would do violence to the words used, and would palpably defeat the meaning and intent of the provision under consideration.

The decisions to the contrary are based upon the theory that, under the Constitution, those in the employment of the United States or a State or in institutions of learning or asylums are not thereby prevented from becoming voters in the places where their work requires them or in places where the schools or asylums are situated. They further hold that the right to vote is not gained by a mere presence at such places, but, if it exists, it must be established by acts distinct from such residence.

The Supreme Court of the State of Nevada has not construed this section of the Constitution. I feel, however, that the decisions of the courts of California, Oregon, and Kansas present the better view, and that this section of the Constitution is not to be construed as a prohibition depriving the parties indicated of establishing a residence at their new place of endeavor.

In reference to Government employees and officers on Indian Reservations and their right to establish a residence thereon, it is important to determine if any facts exist by reason of their employment or the particular place of employment that may be inconsistent with the establishment of a residence as defined by our law.

The Supreme Court of Colorado has ruled in a recent case that a Government employee cannot successfully establish a residence at a United States Government

Hospital for voting purposes, because the residence of such person therein cannot be permanent in character for the reason that the employment period and, hence, the residence period is at the will and whim of the employer.

If the Colorado decision is accepted as declaring the correct rule in the matter of establishing residence for Government employees, it would follow that they cannot establish a residence upon Indian Reservations, for, no matter what the intent may be to claim permanency of residence thereon, the uncertainty of their tenure of office makes such intent impossible of fulfillment.

I am of opinion that the mere fact of residence upon a reservation for the statutory period is not, in itself, to be considered as sufficient to constitute a residence to authorize registration and voting, but that such residence must concur with and be manifested by the resultant acts which are dependent of the presence on the reservation.

Where an individual, whether an officer in Government service or a student in a seminary or an inmate of an asylum, by acts and declarations makes manifest his intention of claiming a residence at a particular place and, to that end, complies fully with the requirements of law, the theory which is advanced to deprive the right of such an individual to vote, because of intervening eventualities over which he has no control, seems to me to be too finely spun. If this theory were forced to its logical conclusion, then permanency of residence as affecting all individuals is impossible of attainment, because of the uncertainty of conditions surrounding ones domicile as evidenced by the happening of conditions causing change in domicile over which the individual has no control, and, finally, by the uncertainty of life itself.

I conclude, therefore, that there exists no legal reason which would prohibit an officer or employee of the Government from establishing a residence upon a Government Reservation.

(4) The provisions of the statute, Stats. 1927, chapter 61, specifically provide that inability to read or write shall not be considered as physical disability. The words of the statute, therefore, answer the question.

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

HON. FRED B. BALZAR, *Governor of Nevada, Carson City, Nevada.*

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SYLLABUS

**317. Corporations, Foreign.**

It is not necessary for a foreign corporation to maintain a principal office in this State?

INQUIRY

CARSON CITY, September 17, 1928.

Is it necessary for a foreign corporation to maintain a principal office in this State?