

are not bound by the terms of that Act unless they organize the Boards of County Highway Commissioners as provided for in that Act.

2. In answer to query number 2, it is the opinion of this office that said 1901 Act, *i.e.*, Nevada Compiled Laws 1929, sections 5418-5421, both inclusive, was repealed by said 1911 county road law, *i.e.*, Nevada Compiled Laws 1929, sections 5422-5425, inclusive, and certainly by section 5 of said 1911 Act, omitted from Nevada Compiled Laws 1929, which omitted section reads as follows:

All Acts and parts of Acts in conflict with the provisions of this Act (1911 Act) are hereby repealed.

It will be noted, and is hereinbefore noted, that the provisions of the 1901 Act are practically identical with the provisions of the 1911 Act, except that the 1901 Act provides for the *election* of road supervisors, while the 1911 Act provides for the appointment of such road supervisors by the Board of County Commissioners, and also provides that the terms of office of such road supervisors (section 5423, Nevada Compiled Laws 1929) shall be "during the pleasure of the Board of County Commissioners," or terminated at the pleasure of the Board of County Commissioners. Certainly, these provisions of the 1911 Act are in conflict with the 1901 Act. It is a fundamental rule of statutory construction that where there is conflict between the provisions of two Acts of the Legislature, the provisions of the last enactment prevail and repeal by implication the conflicting provisions of the former Act. In addition to this, section 5 of the 1911 Act expressly repeals all Acts and parts of Acts in conflict with the 1911 Act.

3. From the foregoing, it follows that it is the unqualified opinion of this office that the law of the State of Nevada does not require that the county road supervisors in the road districts in Washoe County be elected at the general election, or at all, and that such road supervisors shall be appointed by the Board of County Commissioners of Washoe County, and not otherwise.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

HON. ERNEST S. BROWN, *District Attorney, Washoe County, Reno, Nevada*.

SYLLABUS

OPINION NO. 1936-220 Residence Voting Qualifications of Civilian Conservation Corps Members.

Men who are enlisted in the Civilian Conservation Corps and who are stationed in camps in the State of Nevada cannot legally register and vote at the elections to be held in the fall of 1936 unless the families of such men reside within this State.

INQUIRY

CARSON CITY, July 22, 1936

Can men who are enlisted in the Civilian Conservation Corps and who are stationed in camps in the State of Nevada legally register and vote at the elections to be held in the fall of 1936?

OPINION

In Attorney-General's Opinion No. 194, dated December 4, 1935, it was held that the members of the Civilian Conservation Corps stationed within the boundaries of an organized school district are not residing in that school district within the meaning of the term "residing," as used in the school code, so as to qualify them as signers of a petition requesting the

establishment of a night school. The authorities therein cited and referred to, and upon which the opinion is based, are applicable to the inquiry propounded herein.

As pointed out in said opinion, the fact is that the members of the Civilian Conservation Corps came to Nevada, not as the result of their own volition, but as the result of orders of superior officers. Their residence in the State is of uncertain duration and depends wholly upon the authorities in command. The position of those who are enrolled in the Corps is similar to that of enlisted men in the military and naval services of the United States Government. As we understand it, those who enroll in the Civilian Conservation Corps enroll for a definite period of time, after which they may enroll for an additional period. We also understand that the individuals who are so enrolled cannot terminate their relationship with the Corps without the consent of the authorities in charge of the Corps first had and obtained. Therefore, it is evident that they are not free to go and come as they will.

This office ruled in Attorney-General's Opinion No. 90, 1932-1934, that civil attaches of the Government Ammunition Base at Hawthorne, Nevada, residing within the so-called reservation at the munitions base on Government land, have the legal right to vote, providing they meet all the requirements of the statutes of Nevada.

This last referred to opinion is limited to civil attachés of the Government. We believe that there is considerable difference between civil attachés and members of the Civilian Conservation Corps. While the Conservation Corps is entitled a "Civilian Conservation Corps," nevertheless the members thereof are, as hereinbefore pointed out, not free to terminate their connection with the organization of their own free will. If they have no choice in choosing their residence and cannot freely change their place of abode, it can hardly be said that the fact that they lived in Nevada during their term of service evidences any intention on their part to make their legal residence within the State of Nevada.

In Attorney-General's Opinion No. 316, 1927-1928, it was held that whether Government employees of an Indian Reservation can vote depends upon the matter of residence. In that opinion, the then Attorney-General said:

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

Section 2 of Article II of the Nevada Constitution was also discussed and authorities referred to construing constitutional provisions of similar import in sister jurisdictions.

In passing on the inquiry to which the present opinion is directed, attention must also be directed to section 2365, Nevada Compiled Laws 1929, which reads in part as follows:

If a man have a family residing in one place and he does business in another, the former must be considered his place of residence, unless his family be located there for temporary purposes only; but if his family reside without the State, and he be permanently located within the same, with no intention of removing therefrom, he shall be deemed a resident.

It is our understanding that members of the Civilian Conservation Corps are required to send a large portion of their pay to those members of their families who are dependent upon them wholly or partially for support. Since the members of the Corps are enlisted from all over the United States and their families are residing at or near the places of their enlistment, and since it can hardly be said that their location in this State with the Civilian Conservation Corps is permanent, it is our opinion that the residence of the members of the Civilian Conservation Corps must be considered to be at the place at which their families are residing.

"Residence," as used in the statutes defining who shall have the right to vote, means that a person shall not only be physically, corporeally, and actually present within the State for the

statutory period, but the person must, while he is residing in the State and county, have a definite *intention* to make the State and county his home.

For the foregoing reasons, and upon the authorities cited in the opinions of the Attorney-General's office herein referred to, this office is of the opinion that members of the Civilian Conservation Corps whose families do not reside in the State of Nevada are not entitled to register and vote at the elections to be held in Nevada in 1936, and that merely residing for the statutory period in the State and county as a member of the Civilian Conservation Corps is not in itself sufficient to constitute residence to authorize registration and voting.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

By: W. HOWARD GRAY, *Deputy Attorney-General*

HON. W. R. REYNOLDS, *District Attorney, Eureka County, Eureka, Nevada.*

SYLLABUS

OPINION NO. 1936-221 Nominations of Candidates for County Offices.

When a vacancy occurs in a partisan office after the holding of the primary election, the nominations for the office for the unexpired term shall be made by the county central committees of the respective parties.

STATEMENT

CARSON CITY, July 30, 1936

About July 22, 1936, this office received from Hon. Roger Foley, District Attorney of Clark County, a letter discussing the method of nominating partisan candidates, under the primary election law of this State, for county offices other than nonpartisan offices, in cases where the particular county offices become vacant by resignation or death after the time provided in section 4 of the primary election law, which is Nevada Compiled Laws 1929, section 2407, for the Secretary of State to "prepare and transmit to each County Clerk a notice in writing designating the offices for which the candidates are to be nominated at such primary election," and after the time within which said section requires the County Clerk to publish so much of such notice, so transmitted to him by the Secretary of State as may be applicable to his county, in a newspaper published in that county. In said letter this office is asked for its official opinion on the points of law involved.

The letter is so full and complete and so well and clearly discusses the law on the points involved that we quoted, as follows, the entire letter, omitting the superscription, etc., and the name of the officer who resigned his position after the period of time had elapsed within which the Secretary of State is required to so prepare and transmit said notice and the county Clerk to so publish it:

Since receiving your letter of June 29, new developments have occurred in the Recorder and Auditor's office, Mr. _____ having fully paid up and made good the shortage and tendered his resignation to take effect at midnight, July 31.

Friday evening, July 3, he informed me that an additional shortage of \$351 existed in his accounts. On Monday, July 6, the next business day, I informed Mr. _____ that he must make full settlement and resign his office or be prosecuted. With the assistance of friends, he was able to sell his furniture and make good the full amount of this new and the balance of the old shortage, totaling \$547.81. Mr. Trabert, Deputy State Auditor, at our request, kindly came from Goldfield and made a complete check of the affairs of the office, and advised us that \$547 was the entire shortage. This amount of money has been deposited with the County Treasurer.