

DEAR SECRETARY KOONTZ:

You have requested the opinion of this office on the following question:

QUESTION

Does the repeal of [NRS 293.290](#) prohibit assistance by another person to a disabled or handicapped voter in marking his ballot or operating a voting machine?

ANALYSIS

[NRS 293.290](#), prior to its repeal by the 1971 Legislature, authorized the county clerk to provide assistance at the polls, if by reason of a physical disability the voter was unable to mark a ballot or operate a voting machine.

Article 2, Section 1 of the Nevada Constitution provides:

All citizens of the United States (not laboring under the disabilities named in this constitution) of the age of eighteen years and upwards, who shall have actually, and not constructively resided in the state six months, and in the district or county thirty days next preceding any election, shall be entitled to vote for all officers that now or hereafter may be elected by the people, and upon all questions submitted to the electors at such election. * * *

Refusal to permit assistance to a physically disabled person, when by reason of that disability he is unable to mark his ballot or operate a voting machine, would disenfranchise the voter. Only those convicted of treason or a felony, or idiots or insane persons are disqualified from voting.

The repeal of [NRS 293.290](#) cannot result in the disenfranchisement of physically disabled voters, otherwise qualified to vote, as the Nevada Constitution guarantees them the right of suffrage.

[NRS 293.247](#) provides that:

The secretary of state shall promulgate rules and regulations not inconsistent with the election laws of this state, for the conduct of primary and general elections in all counties.

The Secretary of State, therefore, to meet the provisions of the Nevada Constitution in regard to the right suffrage, may provide by regulation that election officials assist physically disabled voters to mark their ballots or operate voting machines, in cases where physical disabilities prevent such voters from doing so themselves.

CONCLUSION

Repeal of [NRS 293.290](#) does not prohibit assistance at the polls to handicapped voters and the Secretary of state may prescribe regulations permitting election officials to assist physically disabled voters to mark their ballots and operate voting machines, in cases where the disability prevents the voter from doing so himself.

Respectfully submitted,

ROBERT LIST, *Attorney General*

78 Election—Registration of Military Personnel—Members of the military service who entered the service from outside the State of Nevada may establish residency for voting purposes in the State of Nevada on the same basis as

other Nevada residents and should be registered to vote if they meet other statutory and constitutional requirements.

• CARSON CITY, April 27, 1972

MR. JAMES A. BILBRAY, 302 East Carson Avenue, Las Vegas, Nevada 89101

DEAR MR. BILBRAY:

This opinion is in reply to your recent letter in which you requested an opinion on the following:

QUESTION

Under what circumstances may citizens who are not residents of the State of Nevada at the time they entered the military service but who are currently in the military service and residing in Nevada be entitled to register and vote in elections in Nevada?

ANALYSIS

Attorney General's Opinion No. 48, dated October 20, 1971, treated in great detail the current position of the State of Nevada concerning voter registration. While this opinion and review was specifically directed to a registration of students age 18, 19, and 20, much of the reasoning and many of the citations are germane to the question which you asked and, therefore, will not be treated again in detail in this opinion.

It is sufficient to say that under Article II of the Nevada Constitution and [NRS 10.020](#) and [293.485](#) et seq., that the legal residence for one wishing to vote in the state of Nevada is synonymous with the term domicile and, therefore, in order to acquire a residence for voting purposes in the location in which the individual resides it must be demonstrated that the individual has the intention to make that locality his home coupled with the intent to abandon his former residence or domicile, and this situation must continue for the period prescribed in the Nevada Constitution and the Nevada Revised Statutes.

It must also be remembered, as indicated by the numerous citations appearing on this point in Attorney General's Opinion No. 48, supra, that the Supreme Court of the State of Nevada has consistently interpreted the laws pertaining to registration and voting in such a way as to permit the greatest number of citizens to exercise their time-honored and long-protected franchise to participate in elections.

The most recent formal opinion of this office concerning the right of an individual in the military service to establish a voting residence in the State of Nevada was Attorney General's Opinion No. 276, dated March 7, 1962. This opinion is reaffirmed insofar as it permits a member of the military service to establish residency for voting purposes in the State of Nevada. However, the section of this opinion which intimates that the individual in the military service has an additional or greater burden to establish residency than do other individuals is specifically disaffirmed due to the fact that it is inconsistent with recent case law as well as recent Attorney General's Opinion No. 48, supra, issues by this office.

The recent Michigan Supreme court case of *Wilkins v. Bentley*, Mich. (No. 52953; August 27, 1972) held that a statute similar to [NRS 293.487](#) and Article II, Section 2 of the Nevada Constitution must be treated as not placing a presumption of residency or nonresidency upon the individuals attempting to register when it held that this type of presumption would violate both the 14th and 26th Amendments to the United States Constitution.

As also noted in Attorney General's Opinion No. 48, supra:

Failure to treat all those attempting to secure the right to vote equally would also be in contravention of 42 U.S.C.A. § 1971(a)(2)(A), which reads:

“2. No person acting under color of law:

(A) Shall in determining whether any individual is qualified under state law or laws to vote in any election apply any standard, practice, or procedure different from the standards, practices or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by state officials to be qualified to vote.”

It is noted that this section applies to all forms of discrimination and differs from § 1971(a)(1) in that it is not limited to discrimination on the basis of race, color, or previous condition of servitude.

As a result of these and other holdings cited in Attorney General’s Opinion No. 48, *supra*, the position of the Attorney General’s Office as stated at page 11 of Attorney General’s Opinion No. 48, *supra*, was:

* * * previous Attorney General’s opinions which stated that students or other individuals enumerated in either [NRS 293.487](#) or under Article II, § 2 of the Constitution have an additional burden of establishing residency are hereby disaffirmed.

The United States Supreme Court dealt with the problems of members of the Armed Forces attempting to register in the state in which they are stationed in the case of *Carrington v. Rash*, 380 U.S. 89 (1965). While this case apparently approved Nevada Attorney General’s Opinion No. 276 of 1962 in a comment in footnote 3 at pages 91-29, the holding of the case generally was that the state may establish, on a nondiscriminatory basis and in accordance with the constitution, reasonable qualifications for the exercise of the voting franchise. The court also noted that “[t]he declaration of voters concerning their intent to reside in the State and in a particular county is often not conclusive; the election officials may look to the actual facts and circumstances.”

Based on the above-cited cases, a permissible procedure for those who register voters in the State of Nevada to use in determining whether or not a member of the military service is a resident of the State of Nevada for voting purposes would be to question the individual in order to determine his residency. However, this questioning must be on a nondiscriminatory basis and conducted in such a way that the proof required of the individual in the military service to establish residency for voting purposes is the same proof that is required of other individuals who are not members of the military service and involves no additional or burdensome tests or conditions. As noted at page 97 of *Carrington, supra*, “[T]he uniforms of our country * * * [must not] be the badge of disfranchisement for the man or woman who wears it.” (Court’s brackets.)

CONCLUSION

Members of the military service who entered the service from outside the State of Nevada may establish residency for voting purposes in the State of Nevada on the same basis as other Nevada residents and should be registered to vote if they meet the other statutory and constitutional requirements.

Respectfully submitted

ROBERT LIST, *Attorney General*

By ELLIOTT A. SATTLER, *Deputy Attorney General*