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RESIDENCE ON FEDERAL-OWNED TERRITORY — UNDER THE LAW, STANDING ALONE, DOES NOT CONSTITUTE GROUNDS TO DENY THE RIGHT TO VOTE — PERSONS RESIDING ON SUCH TERRITORY ENTITLED TO VOTE, IF OTHERWISE QUALIFIED — TERRITORY ACQUIRED UNDER AUTHORITY OF "URGENT DEFICIENCY APPROPRIATION ACT, 1941," PUBLIC LAW NUMBERED 9-77th CONGRESS, THE "ADDITIONAL URGENT DEFICIENCY APPROPRIATION ACT, 1941," PUBLIC LAW NUMBERED 73-77th CONGRESS AND PUBLIC LAW NUMBERED 849-76th CONGRESS, AS AMENDED, POPULARLY KNOWN AS "LANHAM ACT."

SYLLABUS:

Residence on federal-owned territory, acquired under the authority of the "Urgent Deficiency Appropriation Act, 1941", Public Law Numbered 9-77th Congress, the "Additional Urgent Deficiency Appropriation Act, 1941", Public Law Numbered 73-77th Congress, and Public Law Numbered 849-76th Congress, as amended, popularly known as the "Lanham Act", standing alone, does not constitute grounds for denying the right to vote, and persons residing on such territory are entitled to vote, if otherwise qualified.

Columbus, Ohio, November 4, 1944

Hon. Marcus Shoup, Prosecuting Attorney
Xenia, Ohio

Dear Sir:

This will acknowledge receipt of your recent communication, which reads as follows:

> "The question has arisen concerning the rights of persons residing on federal-owned real estate situated in Greene County, Ohio, to vote in the general election on November 7th next.
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> The real estate in question does not lie within the limits of a naval or military reservation and concerns three separate tracts, one of which was acquired under the authority of the 'Urgent Deficiency Appropriation Act, 1941', Public Law Numbered 9-77th Congress, and the 'Additional Urgent Deficiency Appropriation Act, 1941', Public Law Numbered 73-77th Congress. The remaining two tracts were acquired under the authority of

Public Law Numbered 849-76th Congress, as amended, popularly known as the 'Lanham Act'.

An objection and protest has been filed with the Greene County Board of Elections under the claim that these residents are not entitled to vote by reason of the claim that this property is controlled and supervised by the Federal government.

Due to the emergency of the matter, I would appreciate a prompt opinion from you on the matter as presented."

Article V, section 1 of the Constitution of Ohio, reads:

"Every citizen of the United States, of the age of twenty-one years, who shall have been a resident of the state one year next preceding the election, and of the county, township, or ward, in which he resides, such time as may be provided by law, shall have the qualifications of an elector, and be entitled to vote at all elections."

The residence qualifications with respect to county and precinct are contained in section 4785-30 of the General Code, and are as follows:

"No person shall be permitted to vote at any election unless he shall have been a resident of the state for one year, of the county for thirty days and of the voting precinct twenty-eight days next preceding the election at which he offers to vote, * * *."

From the above, it is at once apparent that if the persons in question will have been residents of Ohio for one year, the county for thirty days, and the precinct for twenty-eight days next preceding November 7, they will be entitled to vote at the general election to be held on said date, assuming, of course, that any of such persons who live in registration areas are properly registered. Therefore, the essential question is whether such persons are actually residents of the state of Ohio, or, stated otherwise, whether the place where they presently reside is, for the purpose of our election laws, within the state of Ohio and under the jurisdiction of the laws of Ohio.

The Constitution of the United States contains the following provision (Artice I, section 8, clause 17):

"The Congress shall have Power * * *:

To exercise exclusive Legislation in all Cases whatsoever,

over such District (not exceeding ten Miles square) as may be, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the erection of Forts, Magazines, Arsenals, dock-Yards, and other needful buildings; * * *."

Consent to such acquisition and jurisdiction was given by the General Assembly of this state in 1902 and is set out in sections 13770, 13771 and 13772 of the General Code, which sections read:

Section 13770:

"That the consent of the state of Ohio is hereby given, in accordance with the seventeenth clause, eighth section, of the first article of the constitution of the United States, to the acquisition by the United States, by purchase, condemnation, or otherwise, of any land in this state required for sites for custom houses, court houses, post offices, arsenals, or other public buildings whatever, or for any other purposes of the government."

Section 13771:

"That exclusive jurisdiction in and over any land so acquired by the United States shall be, and the same is hereby, ceded to the United States, for all purposes except the service upon such sites of all civil and criminal process of the courts of this state; but the jurisdiction so ceded shall continue no longer than the said United States shall own such lands."

Section 13772:

"The jurisdiction ceded shall not vest until the United States shall have acquired the title to the said lands by purchase, condemnation or otherwise; and so long as the said lands shall remain the property of the United States when acquired as aforesaid, and no longer, the same shall be and continue exempt and exonerated from all state, county and municipal taxation, assessment or other charges which may be levied or imposed under the authority of this state; provided that nothing in this act contained shall be construed to prevent any officers, employes or inmates of any national asylum for disabled volunteer soldiers located on any such land over which jurisdiction is ceded herein, who are qualified voters of this state from exercising the right of suffrage of all township, county and state elections in any township in which such national asylum shall be located."

It is now well settled that the above constitutional provision does not compel the United States to assume exclusive jurisdiction in all cases where land is purchased by it, even though the laws of the state wherein such land lies contain provisions under which consent to such purchase is given.

In the case of Atkinson v. State Tax Commission of Oregon, 303 U. S. 20; 82 L. Ed. 621 (decided January 31, 1938), it is stated in a per curiam opinion:

> "In Silas Mason Co. v. Tax Commission, 302 U. S. 186, ante, 187, 58 S. Ct. 233, supra, we said that as a transfer of exclusive jurisdiction rests upon a grant by the State, it follows, in accordance with familiar principles applicable to grants, that the grant may be accepted or declined. Acceptance may be presumed in the absence of evidence of a contrary intent. But we found no constitutional principle 'which compels acceptance by the United States of an exclusive jurisdiction contrary to its own conception of its interests.' The mere fact that the Government needs title to property within the boundaries of a State 'does not necessitate the assumption by the Government of the burdens incident to an exclusive jurisdiction.' "

Of like effect is the statement contained in the opinion of Mr. Justice Reed in Stewart & Co. v. Sadrakula, 309 U. S. 94, 84 L. Ed. 596 (decided January 29, 1940), which is as follows:

> "It is now settled that the jurisdiction acquired from a state by the United States whether by consent to the purchase or by cession may be qualified in accordance with agreements reached by the respective governments. The Constitution does not command that every vestige of the laws of the former sovereignty must vanish. On the contrary its language has long been interpreted so as to permit the continuance until abrogated of those rules existing at the time of the surrender of sovereignty which govern the rights of the occupants of the territory transferred."

See also: Murray v. Gerrick & Co. 291 U. S. 315, 78 L. Ed. 821.

Arlington Hotel Co. v. Fant, 278 U. S. 439, 73 L. Ed. 447.

In the case of Adams v. United States, 319 U. S. 312, 87 L. Ed. 1421, it was held as disclosed by the first headnote:

> "Unless and until notice of acceptance of jurisdiction has been given, Federal courts are without jurisdiction to punish

> under criminal laws of the United States an act committed on lands acquired by the United States, where the applicable statute (Act of October 9, 1940, 40 USC sec. 255) provides that United States agencies and authorities may accept exclusive or partial jurisdiction over lands acquired by the United States by filing notice with the governor of the state, or by taking other similar appropriate action, and that unless and until the United States has so accepted jurisdiction it shall be conclusively presumed that no such jurisdiction has been accepted."

The act of October 9, 1940, 40 USC, section 255, which contains authority for the acquisition of lands by the United States for the purpose of erecting thereon armories, arsenals, fortifications, navy yards, custom houses and other public buildings, provides that exclusive jurisdiction of the United States over such lands shall not be required but that the head or other authorized officer of any department, if he may deem desirable, may accept on behalf of the United States such jurisdiction by filing a notice of such acceptance with the Governor of the state wherein such lands are situated.

In recent years the Congress of the United States, in the enactment of certain laws, providing for the acquisition of lands and the construction of dwellings to provide housing for persons engaged in national defense activities, has expressly declared its intention not to exercise exclusive legislation over the lands taken.

Among such are the acts under which the acquisition of the lands in question was effected.

In so far as the provisions of said acts are pertinent hereto, they read:

Public Law Numbered 9-77th Congress.

> "That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending June 30, 1941, for the following respective purposes: * * *
>
> EMERGENCY FUNDS FOR THE PRESIDENT
>
> Defense Housing: To enable the President of the United States, through such agencies of the Government as he may designate, without regard to section 3709, Revised Statutes, to provide temporary shelter, either by the construction of buildings or otherwise, including appurtenances and including the acqui-

sition of land or interests therein, in localities where by reason of national defense activities a shortage of housing exists, as determined by the President, and where it is not practicable under the Act of October 14, 1940 (Public, Numbered 849, Seventy-sixth Congress), or other Acts of Congress or through private enterprise to meet the immediate need for emergency housing, fiscal year 1941, $5,000,000, to be available until June 30, 1942, * * *."

Public Law Numbered 73-77th Congress.

"That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, to supply additional urgent deficiencies in certain appropriations for the fiscal year ending June 30, 1941, and for other purposes, namely:

EMERGENCY FUNDS FOR THE PRESIDENT

Defense housing: For an additional amount to enable the President of the United States to provide temporary shelter in localities where by reason of national defense activities a shortage of housing exists, fiscal year 1941, including the objects and subject to the conditions specified under this head in the Urgent Deficiency Appropriation Act, 1941, approved March 1, 1941, $15,000,000, to remain available until June 30, 1942."

Public Law Numbered 849-76th Congress, codified as USC, Title 42, sections 1521 to 1552, inclusive (Lanham Act).

USC, Title 42, section 1521:

"In order to provide housing for persons engaged in national-defense activities, and their families, and living quarters for single persons so engaged, in those areas or localities in which the President shall find that an acute shortage of housing exists or impends which would impede national-defense activities and that such housing would not be provided by private capital when needed, the Federal Works Administrator (hereinafter referred to as the 'Administrator') is authorized:

(a) To acquire prior to the approval of title by the Attorney General (without regard to sections 1136, as amended (10:1339), and 3709 (41:5) of the Revised Statutes) improved or unimproved lands or interests in lands by purchase, donation, exchange, lease (without regard to section 322 of the Act of June 30, 1932 (47 Stat. 412), as amended (40:278a), the Act of March 3, 1877 (19 Stat. 370) (40:34), or any time limit on the availability of funds for the payment of rent), or condemnation (including proceedings under the Acts of August 1, 1888 (25 Stat. 357) (40:257, 258), March 1, 1929 (45 Stat. 1415)

(40:361 to 386), and February 26, 1931 (46 Stat. 1421) (40:258a to 258e))."

USC, Title 42, section 1547.

"Notwithstanding any other provision of law, the acquisition by the Administrator of any real property pursuant to this Act (Sec. 1521 et seq. of this title) shall not deprive any State or political subdivision thereof of its civil and criminal jurisdiction in and over such property, or impair the civil rights under the State or local law of the inhabitants on such property. As used in this section the term 'State' shall include the District of Columbia."

USC, Title 42, section 1552.

"Any agency designated by the President to provide temporary shelter under the provisions of Public Law Numbered 9, Seventy-seventh Congress, Public Law Numbered 73, Seventy-seventh Congress, or the Third Supplemental National Defense Appropriations Act, 1942, shall have the same powers with respect to the management, maintenance, operation, and administration of such temporary shelter as are granted to the Federal Works Administrator under section 304 and section 306 of this Act (secs. 1544, 1546 of this title) with respect to projects constructed thereunder, and the provisions of section 307 (sect. 1547 of this title) shall apply to such temporary shelter projects and the occupants thereof."

It will be noted from the provisions of section 1547 above quoted, that the state of Ohio was not deprived of its civil and criminal jurisdiction over those lands acquired by the United States under the authority of section 1521, nor were the civil rights of the persons living on such lands, given them under the law of Ohio, impaired by such acquisition.

It will likewise be observed that section 1552 not only brings within a like status those lands acquired under Public Law Numbered 9-77th Congress and Public Law Numbered 73-77th Congress, but also preserves to the occupants thereof the civil rights enjoyed by them under our state laws.

The question of whether the term "civil rights" as used in section 1547 includes the right to vote was passed on by both the Supreme Court of California, in the case of Johnson v. Morrill, 126 Pac. (2d) 873 (decided June 16, 1942), and the Supreme Court of Kansas, in the case of

State, ex rel. v. Corcoran, 128 Pac. (2d) page 999 (decided September 19, 1942). In the former case it was held:

> "The phrase 'civil rights' as used in the section of the Lanham Act that acquisition of realty for housing projects constructed for defense workers shall not deprive any state or political subdivision thereof of its civil or criminal jurisdiction over such property, or impair the civil rights under the state or local law of the inhabitants of such property, includes the political right of suffrage."

In the latter case the court stated:

> "The term 'civil rights' as used in federal statute providing for the housing of persons engaged in national defense and providing that the acquisition of realty for housing projects shall not impair civil rights under the state or local law of the inhabitants, is broad enough to and does include 'political rights' such as the right to vote."

In each of such cases the question before the court dealt with the right of the occupants of lands acquired by the United States under the Lanham Act, to register and vote.

In the Johnson case it was held as disclosed by the fourth branch of the syllabus:

> "The United States did not have 'exclusive jurisdiction' over housing projects constructed for defense workers under the Lanham Act providing that the acquisition of realty shall not deprive any state or political subdivision thereof of its civil or criminal jurisdiction or impair civil rights, and hence defense workers living in housing projects were entitled to register as electors of the state in counties where the housing projects were located."

The holding of the court in State, ex rel. Corcoran was to the same effect. The seventh branch of the syllabus thereof reads:

> "Where the federal government did not exercise 'exclusive legislation', which is tantamount to 'exclusive jurisdiction', over tracts of realty acquired within the state by the federal government for housing facilities for defense workers, nor over automobile trailer camps occupied by defense workers, and did not attempt to exercise any type of authority over realty owned by private individuals, the defense workers were enttled to vote within the state."

Therefore, in light of the above statutory provisions and the judicial pronouncements with respect thereto, it follows that the Congress of the United States has never exercised exclusive legislation or exclusive jurisdiction over the lands in question, and consequently I find myself constrained to the view that residence on such lands does not in and of itself constitute grounds for denial of voting.

Before concluding, however, your attention is invited to the provisions of section 4785-31 of the General Code of Ohio. Said section, which embraces the rules for determining the residence of electors, contains the following language:

> "All registrars and judges of elections, in determining the residence of a person offering to register or vote, shall be governed by the following rules, so far as they may be applicable:
>
> a. That place shall be considered the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning. * * *
>
> c. A person shall not be considered to have gained a residence in any county of this state, into which he comes for temporary purposes only, without the intention of making such county his permanent place of abode."

In view of the above, it appears necessary that any person before he can acquire a voting residence in a certain county must intend to make such county his permanent place of abode. In other words, in order to establish a residence in a particular place for the purpose of voting, a person must live in such place with the intention of remaining therein for an indefinite time and returning thereto whenever he is absent therefrom and consider such place as the one in which his habitation is fixed and not as a place of temporary abode.

In an opinion rendered by me on May 25, 1943 (Opinions of the Attorney General for 1943, page 279), it was stated:

> "In determining the residence of a person for purposes of voting, the intent of such person is of paramount importance. Such intent, however, must be considered in light of surrounding circumstances. The residence of a person depends upon no one fact, or combination of circumstances, but from the whole taken together it must be determined in each particular case. The ques-

> tion of residence therefore must be determined by the local election officials by the facts in each case and by the application of the rules set out in Section 4785-31, General Code."

Coming now to the instant case, it is apparent from the above that any person living within the area in question who regards his residence therein as being of a temporary character, and who has no intention of making such area his permanent place of abode, does not have the right to vote in the precinct in which he is now living.

In light of the above, and in specific answer to your question, you are advised that in my opinion residence on the lands referred to in your request, standing alone, does not constitute grounds for denying the right to vote, and persons residing on such lands should be permitted to vote at the forthcoming election, if otherwise qualified to do so.

Respectfully,

THOMAS J. HERBERT

Attorney General