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OFFICIAL OPINION NO. 14

October 13, 1972

Mr. Karl J. Stipher, Member
State Election Board
1015 State Office Building
Indianapolis, Indiana 46204

Dear Mr. Stipher:

This is in reply to your request for my Official Opinion regarding the following question:

“Is a person entitled to obtain an absentee voter’s ballot in Indiana when he has voluntarily removed himself from the United States to Canada or some other country outside the United States for an indefinite period of time in order to avoid service under the Selective Service Act, or in order to avoid prosecution as a deserter from the Armed Forces of the United States, or in order to avoid prosecution under any criminal law of any state or of the United States?”

ANALYSIS

For those individuals who were never registered and for those individuals who were purged from voting rolls and are not eligible to vote, the question is relatively clear. However, the situation of those individuals who have been registered to vote in the past but change their residency deserves some comment.

Acts 1971, P.L. 11, § 9; IC 1971, 3-1-21-3, as found in Burns’ Ind. Stat. Ann. § 29-4803 provides:

“* * * In determining the residence or domicile * * *

“(3) If a person removes to another state with the intention of remaining there for an indefinite time as a place of residence, he shall be considered to have lost his residence in this state, notwithstanding he intends to return at some future time.”

Therefore, in light of the above statute, a person who voluntarily removes himself from the State of Indiana for an

indefinite time would be considered to lose his residency, and this consideration should hold for those individuals who remove themselves from the country as well.

The fact that one leaves the United States in order to avoid service under the Selective Service Act or in order to avoid prosecution as a deserter from the United States Armed Services or in order to avoid prosecution under any criminal law of any state of the United States, evidences an already manifest intent to "remove [himself] to another state with the intention of remaining there for an indefinite time as a place of residence."

Such a loss of residence would as a matter of law preclude anyone from registering to vote. Acts 1945, Ch. 208, as amended by Acts 1971, P.L. 11; IC 1971, 3-1-7-26, as found in Burns' Ind. Stat. Ann. §§ 29-3426 (1969 Repl.)—29-3426a (1972 Supp.). As a logical consequence, it follows that such an individual who has lost his residence would not be able to vote by absentee ballot since he would not be able to qualify under Acts 1945; Ch. 208, § 194, as amended; IC 1971, 3-1-22-1, as found in Burns' Ind. Stat. Ann. § 29-4901 (1972 Supp).

Courts have continually emphasized that voting by absentee ballot is a privilege and not a right. Quoting from the language of Judge Montgomery:

"The casting of an absentee ballot is a privilege and not an absolute right. It is a privilege accorded individuals who, because of their own business or their own pleasure, see fit not to be within the jurisdiction or within a municipality on election day. They must take the situation as they find it."

Portmann v. Board of Elections, 60 Ohio. App. 54, 19 N.E. 2d 531 (1938).

Since absentee balloting is a privilege, the statute granting this privilege should be strictly construed.

Residency requirements established by state law have been attacked on the basis that such laws restrict interstate travel by an individual. As a consequence, Congress passed § 1973aa.1 of the Voting Rights Act Amendment of 1970,

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42 U.S.C. § 1973, which states that the voting rights of citizens of the United States shall not be precluded by residency requirements of the state from which he is moving or the state in which he intends to establish his residency from voting for the President or Vice President. However, the Voting Rights Act amendment does not provide for individuals who remove themselves from the country. Therefore, it does not have application to the question being considered, and Burns' § 29-4803 (3), *supra*, is controlling.

CONCLUSION

It is, therefore, my Official Opinion that a person is *not* entitled to obtain an absentee voter's ballot in Indiana when he has voluntarily removed himself from the jurisdiction of this state and nation to Canada, or some other country outside the United States, for an indefinite period of time in order to avoid service under the Selective Service Act, or in order to avoid prosecution as a deserter from the Armed Forces of the United States, or in order to avoid prosecution under any criminal law of the State of Indiana or of the United States.