



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Robert F. McDonnell
Attorney General

October 3, 2006

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

The Honorable Jean R. Jensen
Secretary, State Board of Elections
200 North 9th Street, Suite 101
Richmond, Virginia 23219

Dear Mrs. Jensen:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issues Presented

You ask whether a general registrar may deny the application of a servicemember to register to vote or cancel the registration of a registered voter who is a member of the armed forces of the United States when that individual files a certificate of legal residence with the treasurer that lists the servicemember's residence in another state under 50 U.S.C. app. § 571 of the Servicemembers' Civil Relief Act of 2003.¹ You also ask whether a general registrar is authorized to request documentation confirming the restoration of voting rights to a person previously convicted of a felony.

Response

It is my opinion that a general registrar may not deny the application for voter registration of a servicemember or cancel the voter registration of a registered voter who is a member of the armed forces of the United States solely because the servicemember files a certificate of legal residence listing his residence in another state pursuant to 50 U.S.C. app. § 571. Furthermore, it is my opinion that a general registrar may request documentation to confirm the restoration of voting rights to a person previously convicted of a felony.

Background

You advise that servicemembers often file certificates of legal residence with the treasurers of localities in the Commonwealth pursuant to 50 U.S.C. app. § 571 to indicate that for purposes of income taxation their residences are in other states. Your request relates to the determination of domicile and the attendant circumstances of a servicemember's residence for income tax purposes. You specifically refer to 50 U.S.C. app. § 571(a), which provides that

[a] servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by

¹See Pub. L. No. 108-189, 117 Stat. 2835.

reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.

You further observe that the Constitution of Virginia and the *Virginia Code* provide that a person who has been convicted of a felony shall not be permitted to register to vote unless his voting rights have been restored. You refer to § 24.2-418 which states:

The form of the application to register shall require the applicant to provide the following information: full name; gender; date of birth; social security number, if any; whether the applicant is presently a United States citizen; address of residence in the precinct; place of last previous registration to vote; and whether the applicant has ever been adjudicated incapacitated or convicted of a felony, and if so, under what circumstances the applicant's right to vote has been restored.

You also advise that question nine on the State Board of Election's Virginia Voter Registration Application Form² meets the requirements in § 24.2-418 by requiring the applicant to answer questions concerning felony convictions and the restoration of voting rights:

HAVE YOU EVER BEEN CONVICTED OF A FELONY? YES NO
IF YES, HAVE YOUR VOTING RIGHTS BEEN RESTORED? YES NO
IF YES, WHEN RESTORED? (REQUIRED) MO ___ DAY ___ YEAR ___

Because the Board's Application Form includes the requirement for an applicant to state that his right to vote has been restored, you ask whether a registrar may require additional documentation confirming such restoration of voting rights. You relate that a registrar has advised the Board that applicants are required to provide documentation reflecting a restoration of rights because in certain cases the date of the restoration of the voting rights is less than the three-year minimum required by the Secretary of the Commonwealth from the individual's date of conviction. Furthermore, you relate that an applicant may have been convicted of a felony in another state where the right to vote is not forfeited or where such rights automatically are restored upon release from incarceration. In such cases, you note that the applicant may not possess documentation that specifically indicates a restoration of rights.

Finally, you advise that the Virginia Voter Registration Application Form contains the following statement:

I SWEAR/AFFIRM, UNDER FELONY PENALTY FOR MAKING WILLFULLY FALSE MATERIAL STATEMENTS OR ENTRIES, THAT I AM A U.S. CITIZEN AND A RESIDENT OF VIRGINIA, THE INFORMATION I HAVE PROVIDED ON THIS FORM IS TRUE, I AUTHORIZE THE CANCELLATION (ENTERED IN BOX 1 ABOVE) OF MY CURRENT REGISTRATION, AND I HAVE READ THE PRIVACY ACT NOTICE ABOVE.

REMINDER: **SIGN HERE** FOR VOTER REGISTRATION (OR MARK IF UNABLE TO SIGN).

²VIRGINIA STATE BOARD OF ELECTIONS, VIRGINIA VOTER REGISTRATION APPLICATION FORM, No. VA – NVRA – 1 Rev. 9/05, available at <http://www.sbe.virginia.gov/cms/documents/VirginiaVoterRegistrationApplication.PDF> (last visited July 14, 2006).

Applicable Law and Discussion

Article II, § 1, of the Constitution of Virginia provides that

each voter shall be a resident of the Commonwealth and of the precinct where he votes. Residence, for all purposes of qualification to vote, requires both domicile and a place of abode.

Section 24.2-400 provides:

Any person who is not registered to vote, but would otherwise be a qualified voter, is entitled to register to vote as provided in [Chapter 4 of Title 24.2].^[3] Any person who is registered to vote and is a qualified voter shall be entitled to vote in the precinct where he resides.

Section 24.2-417 provides:

Each registrar shall register every resident of his county or city who has the qualifications required by the Constitution of Virginia and [Title 24.2] and who applies for registration or transfer of his registration from another county or city in the Commonwealth at the time and in the manner required by law.

Section 24.2-101 states that the term “residence” or “resident,” for purposes of qualifying to register and vote,

means and requires both domicile and a place of abode. In determining domicile, consideration may be given to a person’s expressed intent, conduct, and all attendant circumstances including, but not limited to, financial independence, business pursuits, employment, income sources, residence for income tax purposes, marital status, residence of parents, spouse and children, if any, leasehold, sites of personal and real property owned by the person, motor vehicle and other personal property registration, and other factors reasonably necessary to determine the qualification of a person to register or vote.

In 1996, the Supreme Court of Virginia decided that:

Before an individual can qualify to vote in Virginia, he must be a resident both of the Commonwealth and of the locality in which he seeks to vote. “Residence, for all purposes of qualification to vote, requires both domicile and place of abode.” To establish domicile, a person must live in a particular locality with the intention^[4] to remain there for an unlimited time. A place of abode is the physical place where a person dwells.^[5]

³Chapter 4 of Title 24.2, §§ 24.2-400 through 24.2-447, comprises the statutory scheme governing voter registration.

⁴The term “intention” means “[t]he willingness to bring about something planned or foreseen; the state of being set to do something.” BLACK’S LAW DICTIONARY 826 (8th ed. 2004).

⁵Sachs v. Horan, 252 Va. 247, 250, 475 S.E.2d 276, 278 (1996) (quoting VA. CONST. art. II, § 1) (citations omitted).

The Court also determined that, for a voter to retain eligibility to vote in a particular locality, “the voter must continue to dwell in the locality with an intention to remain there for an unlimited time. A registrar may cancel a voter’s registration if that individual does not continue to meet these requirements.”⁶ The Court decided the 1996 case squarely on the provisions of Article II, § 1 and § 24.2-417.⁷ As you note, § 511 of the Servicemembers Civil Relief Act of 2003 (the “Relief Act”), which is codified 50 U.S.C. app. § 571(a), provides that:

A servicemember shall neither lose nor acquire a residence or domicile *for purposes of taxation* with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders. [Emphasis added.]

The United States Court of Appeals for the Fourth Circuit has observed that § 511 of the Relief Act is designed to protect servicemen and women from the risk of double taxation on their income and personal property solely by reason of military presence in a state, notwithstanding that their home of record may not impose any such tax.⁸

A 1984 opinion of the Attorney General considered application of the Relief Act to the personal property taxation of a motor vehicle jointly owned by a servicemember and his spouse when the spouse has registered to vote in the Commonwealth.⁹ The opinion concluded that the protection afforded by the Relief Act does not preclude a case-by-case determination regarding whether a military person is in fact a Virginia domiciliary for purposes of local taxation.¹⁰ A 1983 opinion considered application of the Relief Act to the personal property taxation of a motor vehicle owned by a servicemember stationed in Virginia who claimed his domicile in California for the purposes of taxation and registered to vote and subsequently voted regularly in Virginia elections.¹¹ The opinion concluded that the fact the officer did register was simply one factor among many that must be considered in determining his domicile for purposes of personal property tax assessment; it was not conclusive.¹² “Each case must be determined after a consideration of all the facts.”¹³

In § 24.2-101, the General Assembly has established a number of factors that a general registrar may consider to determine one’s domicile. The use of word “may” in this statutory provision implies that

⁶ *Id.* (interpreting § 24.2-429) (citation omitted).

⁷ *See id.*

⁸ *United States v. Onslow County Bd. of Educ.*, 728 F.2d 628, 637 (4th Cir. 1984) (interpreting § 514 of Soldiers’ and Sailors’ Civil Relief Act of 1940, predecessor to § 511 of Relief Act).

⁹ *See* 1984-1985 Op. Va. Att’y Gen. 363 (interpreting § 514 of Soldiers’ and Sailors’ Civil Relief Act of 1940, predecessor to § 511 of Relief Act).

¹⁰ *Id.* at 363.

¹¹ *See* 1983-1984 Op. Va. Att’y Gen. 412 (interpreting § 514 of Soldiers’ and Sailors’ Civil Relief Act of 1940, predecessor to § 511 of Relief Act).

¹² *Id.* at 413.

¹³ *Id.*

the General Assembly intends that the terms following it are permissive or directive and not mandatory.¹⁴ Consequently, the General Assembly has intended “residence for income tax purposes” to be but one of a number of factors to be used in determining one’s domicile for purposes of qualification to register to vote.

In addition, the Virginia Supreme Court clearly has stated that for purposes of qualification to register to vote, residence requires both domicile and a place of abode.¹⁵ To establish domicile, the Court requires that a person live in a particular locality with the *intention* to remain there for an unlimited time.¹⁶ To define place of abode, the Court simply requires that the person dwell in a physical place.¹⁷

Therefore, it is clear that each case must be determined after considering all of the facts. The filing of a certificate of legal residence by a servicemember with the treasurer that lists his residence pursuant to 50 U.S.C. app. § 571 in another state is one of a number of factors that may be considered in determining eligibility to register to vote. Therefore, I must conclude that a general registrar may not deny an application for voter registration or cancel the voter registration of a registered voter who is a servicemember of the armed forces of the United States based solely upon the filing of such certificate.

You next inquire whether a general registrar may request documentation confirming the restoration of voting rights to a person who has been convicted of a felony. The general registrar is a public officer whose duties are defined by statute.¹⁸ The statutory duties of the general registrar are contained in § 24.2-114. The General Assembly requires the general registrar to “[p]rovide the appropriate forms for applications to register *and to obtain the information necessary to complete the applications* pursuant to the provisions of the Constitution of Virginia and general law.”¹⁹

Section 24.2-114(4) provides that the general registrar “obtain the information necessary” to complete voter registration applications, but does not define the term “information.” Statutory construction requires that words be given their ordinary meaning, given the context in which they are used.²⁰ This certainly is the case when the words are not expressly defined by statute.²¹ Absent a statutory definition, the plain and ordinary meaning of the term is controlling.²² “The manifest intention

¹⁴“Unless it is manifest that the purpose of the legislature was to use the word ‘may’ in the sense of ‘shall’ or ‘must,’ then ‘may’ should be given its ordinary meaning—permission, importing discretion.” *Masters v. Hart*, 189 Va. 969, 979, 55 S.E.2d 205, 210 (1949), *quoted in* *Bd. of Supvrs. v. Weems*, 194 Va. 10, 15, 72 S.E.2d 378, 381 (1952); *see also* *Op. Va. Att’y Gen.*: 2000 at 29, 32 n.2; 1999 at 193, 195 n.6; 1997 at 10, 12.

¹⁵*Sachs*, 252 Va. at 250, 475 S.E.2d at 278.

¹⁶*Id.*

¹⁷*Id.*

¹⁸*See* *Op. Va. Att’y Gen.*: 1967-1968 at 105, 105; 1960-1961 at 124, 124.

¹⁹VA. CODE ANN. § 24.2-114(4) (Supp. 2005) (emphasis added).

²⁰*Va. Beach v. Bd. of Supvrs.*, 246 Va. 233, 236, 435 S.E.2d 382, 384 (1993); *see also* 2003 *Op. Va. Att’y Gen.* 3, 4.

²¹*See* *McKeon v. Commonwealth*, 211 Va. 24, 27, 175 S.E.2d 282, 284 (1970).

²²*See* *Sansom v. Bd. of Supvrs.*, 257 Va. 589, 594-95, 514 S.E.2d 345, 349 (1999); *Va. Dep’t of Taxation v. Orange-Madison Coop. Farm Serv.*, 220 Va. 655, 658, 261 S.E.2d 532, 533-34 (1980); *Op. Va. Att’y Gen.*: 2003 at 137, 138; *id.* at 104, 106.

The Honorable Jean R. Jenson
October 3, 2006
Page 6

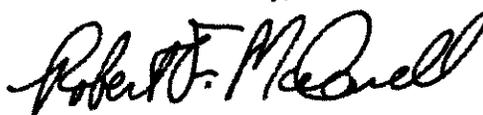
of the legislature, clearly disclosed by its language, must be applied.”²³ Information means “the communication or reception of knowledge or intelligence.”²⁴ “Knowledge is information, meaning having information as to fact.”²⁵ Using the ordinary meaning of “information,” the statute permits the general registrar to collect any documents that provide knowledge that a previously convicted felon’s voting rights have been restored.²⁶

Conclusion

Accordingly, it is my opinion that a general registrar may not deny the application for voter registration of a servicemember or cancel the voter registration of a registered voter who is a member of the armed forces of the United States solely because the servicemember files a certificate of legal residence listing his residence in another state pursuant to 50 U.S.C. app. § 571. Furthermore, it is my opinion that a general registrar may request documentation to confirm the restoration of voting rights to a person previously convicted of a felony.

Thank you for letting me be of service to you.

Sincerely,



Robert F. McDonnell

2:213; 1:941/06-048

²³ *Barr v. Town & Country Props.*, 240 Va. 292, 295, 396 S.E.2d 672, 674 (1990) (quoting *Anderson v. Commonwealth*, 182 Va. 560, 566, 29 S.E.2d 838, 841 (1944)).

²⁴ MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 598 (10th ed. 2001).

²⁵ *Bawden v. Am. Cent. Ins. Co.*, 153 Va. 416, 425, 150 S.E. 257, 260 (1929) (citation omitted).

²⁶ Confirmation that such documentation exists should not cause any person otherwise properly entitled to vote from doing so. The Secretary of the Commonwealth or the State Board of Elections may verify the restoration of voting rights should an applicant for voter registration be unable to produce the requested documentation. See VA. CODE ANN. § 53.1-231.1 (2005) (requiring Secretary of Commonwealth to maintain records of grants of restoration of voting rights); see also § 53.1-231.2 (2005) (requiring Secretary of Commonwealth to notify State Board of Elections “in each case of the restoration of the right or denial of restoration by the Governor.”).