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Constitutional Law--Establishing Student's Domicile For Voting Purposes

Jacob Michael Robinson
West Virginia University College of Law

It can only be speculated as to how far the principal cases go towards resolving the troublesome problems involved in incustody interrogation. It would appear that the decision should go far in that respect, in that, outside the area of waivers of constitutional privileges, the Court's guide lines are fairly narrow and should not be unnecessarily hard to apply. In the coming months *Miranda* and its antecedents will provide fuel for heated discussion on the respective rights of the community, the accused, and the police. Hopefully, after these discussions have quieted, there will be implanted in our criminal jurisprudence a fair and workable balance of the rights of the community, the accused, and the police, all within the meaning and intent of the constitutional provisions.

George Lawson Partain

Constitutional Law—Establishing Student's Domicile For Voting Purposes

A student at the University of Virginia applied for registration to vote, alleging that he had resided in Virginia beyond the statutory period and that he was no longer registered to vote in Florida. When the application was denied by the county registrar, the student filed a petition in the circuit court to have his right to vote determined. The circuit court ruled that the applicant was entitled to vote. *Held,* reversed. Although the Constitution of Virginia provides that a student is not deemed to have gained or lost his right to vote because of his status as a student, he must satisfy the dual domiciliary requirements of presence and intention to be entitled to vote in Virginia. The voter must show an intention to abandon the old domicile and a corresponding intent to remain in the new domicile for an indefinite period of time. That the applicant did not have such intention was indicated by his testimony that he had no definite plans to remain in Virginia, his payment of out-of-state tuition and his failure to show that he was no longer registered in Florida. *Kegley v. Johnson,* 147 S.E.2d 735 (Va. 1966).

In order to vote in a new election district, the prospective voter must establish a domicile in the election district in which he

seeks to vote.[1] The terms "domicile" and "residence" are generally considered synonymous when used in reference to voter registration laws.[2] Generally, to acquire a new domicile for voting purposes, one must: (1) be physically present in the new domicile for a specified period of time; (2) have an intent to abandon the old domicile; and (3) have a corresponding intent to remain in the new domicile for an indefinite period of time.[3] Once domicile is acquired it is presumed to continue until the party alleging the change of domicile presents sufficient proof to rebut the presumption.[4] Although the degree of proof required to rebut the presumption is not a uniform principle, the domiciliary intention of the prospective voter is the controlling factor in the determination of the right to vote in all jurisdictions.[5] Consideration is given to the objective as well as the subjective intent indicated by the would be voter.[6] Thus, the right to vote depends upon the establishment of domicile and domicile depends on the intention of the prospective voter.

It is uniformly held that where a student resides in a university or college town for the sole purpose of obtaining an education, intending to return to his former home, he is not permitted to vote in the university district.[7] Conversely, if the student evidences an intent to make the university town his "new" home, he is permitted to vote because he has an intent to establish domicile independent of the initial purpose of acquiring an education.[8] When a student has no definite plans concerning his future residence, most jurisdictions have allowed the student to vote in the university district.[9] The rationale stated by one court revolves on the theory that, when study is the purpose of a residence in a certain location, there always exists the ulterior intention of resid-

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[1] Carrington v. Rash, 380 U.S. 89 (1965); People v. Turpin, 49 Colo. 234, 112 Pac. 539 (1910).

[2] Berry v. Wilcox, 44 Neb. 82, 62 N.W. 249 (1895).

[3] People v. Turpin, 49 Colo. 234, 112 Pac. 539 (1910).

[4] Welch v. Shumway, 232 Ill. 54, 83 N.E. 549 (1908).

[5] Anderson v. Pifer, 315 Ill. 164, 146 N.E. 171 (1924); Nelson v. Gass, 27 N.D. 357, 146 N.W. 537 (1914).

[6] *In re* Goodman, 146 N.Y. 284, 40 N.E. 769 (1895); Sanders v. Getchell, 76 Me. 158 (1884).

[7] Ptak v. Jameson, 215 Ark. 292, 220 S.W.2d 592 (1949); Seibold v. Wahl, 164 Wis. 82, 159 N.W. 546 (1916).

[8] Robbins v. Chamberlain, 297 N.Y. 108, 75 N.E.2d 617 (1947); Sanders v. Getchell, 76 Me. 158 (1884).

[9] Welsh v. Shumway, 232 Ill. 54, 83 N.E. 549 (1908); Berry v. Wilcox, 44 Neb. 82, 62 N.W. 249 (1895).

ing permanently in that location.[10] Those courts adhering to this holding, however, have required that the student show an intention not to return to his old domicile.[11]

However, a few jurisdictions have adopted more conservative criteria for intention. In these instances, the courts have required that the student manifest an intention to remain in the university district for an indefinite period of time.[12] Consequently, a student whose future residence is uncertain is denied voting privileges in these jurisdictions.

The *Kegley* decision is susceptible to two interpretations. The court stated that if the student had proved the allegations in his complaint, a different decision might have resulted. Consequently, the failure of the student to adduce testimony that he had given up his previous registration may have indicated to the court that the student failed to show abandonment of his old domicile. However, the court stated that the student's testimony illustrated "clearly and conclusively" that his intention to remain in Virginia was "only for a fixed period of time . . . and not to remain indefinitely for the purpose of making the county his home." This language suggests that the Virginia court chose to ignore the decisions of other jurisdictions relating to the lack of definite plans concerning future residence and instead adopted the minority rule that requires a student to declare definitely his domicile in the university situs.

It should be noted that some serious consequences may result from the adoption of the minority rule. In some jurisdictions courts have held that when a student is absent from his own district for a long period of time, he loses his right to vote.[13] Intention is again the governing factor, and the courts have held that it may be inferred from a person's actions. Thus, where the party clearly indicates that his intention is to acquire a new domicile, his right to vote is lost in the old domicile. This effect has been achieved in West Virginia by a statute which

[10] State *ex rel.* Kaplan v. Kuhn, 11 Ohio Dec. 321, 8 Ohio N.P. 197 (Hamilton C.P. 1901).

[11] Welsh v. Shumway, 232 Ill. 54, 83 N.E. 549 (1908); Berry v. Wilcox, 44 Neb. 82, 62 N.W. 249 (1895).

[12] Vanderpool v. O'Hanlon, 53 Iowa 246, 5 N.W. 119 (1880).

[13] See *In re* Sugar Creek Local School Dist., 21 Ohio Op. 2d 16, 90 Ohio L. Abs. 257, 185 N.E.2d 809 (C.P. 1962); Frakes v. Farragut Community School Dist., 255 Iowa 88, 121 N.W.2d 636 (1963).

provides that when a person fails to vote at least once during a period covering two primary and two general elections, his name shall be stricken from the registration records.[14] Therefore, it is conceivable that a situation might arise where the student would be denied his right to vote altogether. Suppose S, the student, has lived and voted in Ohio. S marries and goes to Virginia to attend school. S is uncertain where he will reside upon the completion of his education, so he attempts to register in Virginia. On the basis of these facts, S could be questioned as a voter in Ohio because of his continued absence for a long period of time. He could possibly be denied the right to vote in Virginia since he is uncertain of his future domicile. Consequently S becomes the victim of a judicial dilemma.

The problem presented by the *Kegley* decision apparently has not been presented to the West Virginia Supreme Court. The West Virginia Constitution provides that a person is not eligible to vote unless he has been a resident of this state for one year and a resident of the county in which he desires to register for sixty days preceding the election in which he wants to vote.[15] According to the opinion propounded by one Attorney General, a person's residence for voting purposes is a matter of his own choosing.[16] Furthermore, the West Virginia court has stated that voter registration laws should be construed liberally, favoring the right to vote.[17] More specifically, a federal court in West Virginia has held that a change of domicile depends on an intention to remain in the new one for a definite or indefinite period.[18] The West Virginia Supreme Court has stated it is not necessary to intend to stay indefinitely in the new domicile to effect a change. One may have a mental reservation or an indistinct purpose to leave at some future date. Domicile changes when the intention to return to the old domicile ceases.[19] This reasoning is similar to that used by those courts which have permitted a student to vote where: (1) the student did not know where his future residence would be located; and (2) the student did not intend to return home. The reasonable inference is that the West Virginia Court

[14] W. VA. CODE ch. 3, art. 2, § 3 (Michie 1961).
[15] W. VA. CONST. art. IV, § 1.
[16] 1923-1924 W. VA. ATT'Y GEN. BIENNIAL REP. 647.
[17] See Funkhauser v. Lanfried, 124 W. Va. 654, 22 S.E.2d 353 (1942).
[18] See Jardine v. Intehar, 213 F. Supp. 598 (S.D. W. Va. 1963) (diversity jurisdiction).
[19] *Cf.* Gartin v. Coal & Coke Co., 72 W. Va. 405, 78 S.E. 673 (1913).

would permit a student to vote if he complied with the constitutional requirements and evidenced an intent not to return home. Another factor supporting this position is the absence of a constitutional provision directly relating to student voting. As stated by a former Attorney General, once a prospective voter complies with the constitution, it would take a strong showing to deny that person his right to vote.[20] However, only the West Virginia Supreme Court can determine when a voter has complied with the constitution.

Jacob Michael Robinson

Evidence—Expert Opinion of Speed Based on Damaged Condition of Vehicle

P's intestate was involved in a three car collision at an intersection. A police officer with four years experience on the police force investigated the accident shortly after it occurred. The officer was asked if he had formed an opinion, based on the physical damage to the automobiles and the tire marks in the intersection, whether the automobile driven by *P's* intestate was moving or standing still at the time of the collision. *D's* objection to the question was sustained and *P* was non-suited. *Held,* affirmed. Where a witness investigates but does not see a wreck, he may describe to the jury signs, marks and conditions found at the scene, including damage to the vehicle involved. These observations, however, cannot provide a basis for an opinion by the witness concerning the vehicle's speed because the jury is as well qualified as the witness to determine what inferences the facts will permit or require. *Farrow v. Baugham,* 266 N.C. 739, 147 S.E.2d 167 (1966).

It is within the discretion of the trial court to ascertain whether a witness has the degree of skill, knowledge or experience not common to laymen in a particular field that will qualify him as an expert.[1] However, before the expert may render an opinion, it must be shown that the subject matter is so distinctly related to some science, profession, business or occupation as to be beyond

[20] 1923-1924 W. VA. ATT'Y GEN. BIENNIAL REP. 647.
[1] Byrd v. Virginian Ry., 123 W. Va. 47, 13 S.E.2d 273 (1941).