

RECOMMENDED VOTER QUALIFICATIONS

I. Precedents

A. Current and Geographically Relative

1. Ellice Islands
2. Niue - (see attachment page 1a)
3. Papua - New Guinea

B. Past Trust Territories

1. Cameroons - only persons born in Southern (Northern) Cameroons or one whose parents were born in Southern (Northern) Cameroons could be entitled to register as a voter in the plebiscite.
2. Togoland
3. Ruanda - Burundi
4. Somaliland

II. Current legal provisions relative to establishing voter qualifications

A. Covenant

1. Section 1001(a) states: _____

"...Only persons who are domiciled exclusively in the Northern Mariana Islands and who meet such other qualifications, including timely registration, as are promulgated by the United States as administering authority will be eligible to vote in the plebiscite."

2. Section 1005(e) defines "Domicile" as follows:

"...that place where a person maintains a residence with the intention of continuing such residence for an unlimited or indefinite period, and to which such person has the intention of returning whenever he is absent, even for an extended period."

2. Niue - all persons eligible to vote in a general election in Niue and duly qualified and registered as electors; a British subject; over 18 years; ordinarily a resident (including temporary departure but whose intention since departure has been to return and reside in the Territory Niue indefinitely) of Niue for 3 months immediately prior to registration and resided continuously in Niue for 12 months; not convicted in Niue or British Commonwealth of any offense punishable by death or imprisonment for 1 year or more nor convicted in Niue of a corrupt practice unless in each case a pardon has been granted or completed sentence; is of sound mind. Excluded was any person who was qualified to be registered on an electoral roll or eligible to vote in a general election outside Niue and also expatriate New Zealanders in public service to Niue.

B. Trust Territory Code. Under the provisions of 43 TTC §1, each citizen of TT is now guaranteed the right to vote in territorial elections if:

1. 18 years or older;
2. resided per 43 TTC §251 in TT for 9 months and in Representative District of registration for 3 months preceding date of election;
3. not under a judgement of mental incompetency or insanity;
4. not currently under: (a) parole; (b) probation; or (c) sentence for any felony for which he has been convicted by any court of the Trust Territory or any court within the jurisdiction of U.S. (Recent legislation has been introduced in the COM to restore all civil rights to convicted felons who have been released from confinement.) and
5. has registered to vote in accordance with the provisions of 43 TTC §§251-258.

C. United States Case Law.

*except for
Presidential and
Congressional
elections*

1. Voting Rights. While the right to vote is considered a fundamental right and constitutes the basis of our political system, Yick Wo v. Hopkins, 118 U.S. 356 (1886), it is well established that the privilege to vote is not granted by the U.S. Constitution, Breedlove v. Suttles, 302 U.S. 277, nor is it derivative of the right of U.S. citizenship, Pope v. Williams, 193 U.S. 621. The right to vote is vested, instead, by state constitutions, Breedlove, supra; and as regards the territories, the right to vote is found in the Organic Acts established by the U.S. Congress or by territorial law and that right may be abridged or revoked as the Congress sees fit by virtue of the plenary powers of Congress under Art. IV, Section 3, clause 2 of the Constitution. Murphy v. Ramsey, 114 U.S. 15; Davis v. Beason, 133 U.S. 333.

It has also been held that once elections have been called citizens have a right to vote and participate in elections on an equal basis with other citizens in the same jurisdiction, Evans v. Cornmou, 398 U.S. 419 (1970); Kramer v. Union Free School District, 395 U.S. 621 (1969); however, this right is not absolute, as states have the power to impose voter qualifications and regulate access to the franchise in other ways, Evans, supra; Harper v. Virginia Board of Elections, 383 U.S. 663 (1966); Carrington v. Rash, 380 U.S. 89 (1965); Lassiter v. Northhampton Co. Board of Elections, 360 U.S. 45 (1959).

In restricting the access to franchise which is considered a fundamental right, the State must demonstrate that these laws are necessary to promote a "compelling state interest", Shapiro v.

Thompson, 394 U.S. 618 (1969); Kramer, supra; and that the classification is the least restrictive means by which the state can achieve the interest it asserts as "compelling"; Dunn v. Bloomstein, 405 U.S. 330 (1972). Thus, the courts have on the basis of a denial of equal protection or the failure to establish a compelling state interest in denying equal protection to a class of voters, voided state laws which:

- a. required literacy tests which were barred under the Voting Rights Act of 1965, U.S. v. Arizona, U.S. (1970),
- b. established poll taxes because they discriminate in favor of the affluent, Harper, supra,
- c. which barred those in the military service because they acted as an absolute denial, Carrington, supra, —
- d. denied the vote to residents in a federal enclave because they have interests equal to that of other residents in the state, Evans, supra, and
- e. centered on a supposed lack of economic interest in the issue to be voted, City of Phoenix v. Kolodziejcki, 399 U.S. 204 (1970), Kramer, supra.

Likewise, state statutes cannot unnecessarily burden or restrict a constitutionally protected activity. NAACP v. Button, 371, U.S. 415 (1963).

While the "right to travel" is not found in the U.S. Constitution, it has been held that this is a basic right under the Constitution. U.S. v. Guest, 383 U.S. 745 (1966); The Passenger Cases, 7 How. 283 (1849). Although the court has supported contentions from the states that it may restrict the privilege to vote to bona fide residents, Pope v. Williams, 193 U.S. 62 (1904); the courts have struck down "durational" residency requirements (which are time requirements imposed in addition to those requiring a potential voter to establish a residence) as an attack on a single class of citizens and as an undue burden on the right of citizens to travel and thus a denial of equal protection of law. Marston v. Lewis, 410 U.S. 679 (1973); Dunn v. Blunstein, 405 U.S. 330 (1972).

It should also be noted that the right of citizens to travel is also considered to be part of the law of the Trust Territory. Article 7, Trusteeship Agreement; 1 T.T.C. 8 Ngirasmengesong v. Trust Territory, 1 T.T.R. 345 (1958) noting that the T.T.C. could not permit restrictions on freedom to travel except for public order or security; Yang v. Yang, Current Cases, T.T.R. 429, citing Shapiro to invalidate a two year residency requirement for certain civil remedies in the Trust territory as a denial of equal protection of the laws.

2. Domicile. It is generally held that a person acquires a domicile by actual physical presence, regardless of the period of time, and by establishing his intention of residing there for a definite time and of making that place his home. Establishing physical presence or residence is not difficult and the character of the living quarters is immaterial even though the place be a shack, a rented house or a house of a relative or friend. 25 Am Jur 2d 20. Intent to establish a domicile, however, must correspond with the purpose to change a domicile from one locale to another and must not be contrary to the facts. Thus, a person may not change his domicile merely to obtain the benefits of the legal consequences of having his domicile in a certain area if he does not wish to change his home to that place. The intent must be to live permanently or indefinitely at that place and must not be qualified or conditional upon a future event. Likewise, an expression of intent to return at some indefinite future date to a former place does not destroy present domicile, Gilbert v. David, 235 U.S. 561,; Annis v. Smith, 14 How. 400; nor does the fact that the intention was motivated to secure better treatment under the laws, to avoid local prosecution, or establish new relationships. Restatement Conflict of Laws §22; Domicile Am Jur 2d. The most detailed test of evidence to establish domicile is established in District of Columbia v. Murphy, 314 U.S. 441, where the court noted that a person in government service would not be considered to be domiciled in his place of service if:

- a. he retains a place of abode at the place from which he came,
- b. continues to identify himself with a family home there,
- c. ~~has investments there which attach him to the community,~~
- d. ~~continues affiliations with the professional, religious, and fraternal life of his former community,~~
- e. has maintained a domicile of some permanency in the former community,
- f. he could pick up the threads of close association in his old home; and
- g. continues to pay taxes in his old community because of his retention of domicile which he could avoid by giving it up and whether such taxes are nominal or substantial.

There are other such tests such as (1) oral declarations of intent (although these are not conclusions), (2) registration to vote in a particular locale, (3) the payment of licensing fees and taxes, (4) locale of business, (5) ownership of property, (6) selection of burial plots, and (7) club activities.