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STATE OF KANSAS

Office of the Attorney General

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VERN MILLER
Attorney General

July 2, 1974

Opinion No. 74- 215

Mr. Gary Nafziger
Jefferson County Attorney
Jefferson County Courthouse
Oskaloosa, Kansas 66066

Dear Mr. Nafziger:

K.S.A. 1973 Supp. 19-801b prescribes the qualifications for nomination, election or appointment to the office of sheriff. Among them is the following:

"He must have been an actual, bona fide resident of and domiciled within the county for not less than twelve (12) months immediately preceding July 1 of the election year." [Emphasis supplied.]

You inquire concerning the application of this provision to an individual who has been a resident of the county, but during a period of six weeks in the recent past, took employment in another county, returning to Jefferson County on weekends and for other similar sojourns.

In Gleason v. Gleason, 159 Kan. 448, 155 P.2d 465 (1945), the court stated that "[w]e have held 'residence' and 'domicile' to be equivalents." The court there considered a residency statute in the divorce code, requiring that a plaintiff in a divorce action "have been an actual resident in good faith of the state for one year next preceding the filing of the petition" As the court considered the question, it was one of plaintiff's residence; the terms "actual" and "in good faith" were not regarded as imposing any additional requirement beyond legal residence. Similarly, in K.S.A. 19-801(a)(3), the statute prescribes as a residence qualification merely legal residence for a one year period immediately preceding July 1 of the election year.

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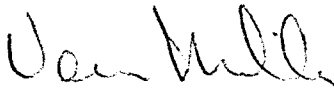
In Strackeljohn v. Campbell, 136 Kan. 145, 12 P.2d 829 (1932), the court considered a case where a family stayed in Garden City in Finney County during each school year, moving to a farm in Gray County at the end of each school year. The trial court found Gray County to be the residence of the family. On appeal, the court affirmed, stating thus in its syllabus:

"Whether a place which a person has chosen and is maintaining as a habitation, declared by him to be his residence, shall be held to be his legal residence, or whether a habitation at another place which he occupies part of the time shall be his legal residence is largely a question of intention, and where his conduct and other circumstances concur with his declared intention to fix the place chosen as his residence for an indefinite time, a finding of the court that such place so chosen is his legal residence will not be disturbed on appeal.

"Where one establishes a residence in a place and later goes to another place for a temporary purpose, as that he goes there so that his children may attend school, and does so with the intention of returning to his fixed home when the school term ends, such temporary absence does not effect a change of residence."

On the basis of the facts presented, there does not appear to be any abandonment of residence in Jefferson County which would disqualify the candidate in question.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:jsm