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Subject

*Eligibility Candidates  
Qualifications*



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STATE OF KANSAS

*Office of the Attorney General*

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER  
*Attorney General*

August 15, 1974

Opinion No. 74- 278

John H. Taylor  
Geary County Attorney  
Geary County Courthouse  
Junction City, Kansas 66441

Dear Mr. Taylor:

We have your letter of August 2, enclosing a copy of a letter from Hayes B. Deck to you, dated August 1.

Mr. Beck is a candidate for election to the Kansas Legislature from the 64th Representative District. He inquires concerning the residence qualification for election, based upon the following. He advises that he owns approximately 1500 acres of land and some industrial property in the district, and that he has resided in the same location for the past 23 years. He states that

"because of the birth of a new grandson, and my son who operates my agricultural interest needing additional housing, we relinquished our home to our son and his family with the intention of building a new home for ourselves at the farm. However, this has not been accomplished and we are temporarily moved into a speculative built house which is one block out of the 64th District. We have not changed our mailing address and have maintained our registration to vote in the township in which we formerly resided. We have full intentions of constructing a new home at the farm which as stated above is in the 64th District."

He asks, specifically, "when, if required, do we actually need to be residing in the new home to be in compliance with the law," or whether it is "possible to reside outside the district with

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full intentions of returning with my agriculture interest and industry located in the district in which I am seeking election." Article 2, § 4 of the Kansas Constitution states thus:

"No person shall be a member of the legislature who is not at the time of his election a qualified voter of, and a resident in, the county, or district for which he is elected."

One who is a qualified voter of a county or district is by definition a legal resident thereof.

The legal rules governing determinations of residence have been summarized thus in *Estate of Schoof v. Schoof*, 193 Kan. 611, 396 P.2d 329 (1964):

"The establishment of residence requires the concurrence of two factors: one physical, the other intellectual. There must be bodily presence at a location coupled with intent to remain there either permanently or for an indefinite period, before residence can be said to have been acquired. A residence once established is presumed to continue until the same has been abandoned. . . . To effect a change of residence, there must be transfer of bodily presence to another place coupled with an intent to abide in the new location either permanently or indefinitely. . . . The length of the stay in the new abode is not of controlling importance, for no stated period of time is required to complete a change of residence; the change may be effectuated on the first day of arrival in the new location provided the required intent to establish residence therein be present." [Citations omitted.]

In *Garlinghouse v. Mulvane*, 40 Kan. 428 (1888), the court stated thus:

"[A] temporary residence elsewhere, or a temporary absence from the state of the debtor and his family, where there is an intention to return, is not sufficient of itself to lose a residence or a homestead here. Where a residence is once established, it requires two conditions or things to destroy it; first, a removal; second, an intention not to return. An intention to go away and never to return will not destroy the residence; neither will the actual re-

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moval from the state without the intention to remain away and not return. . . . The intention of a party must be determined by the surrounding circumstances." [Citations omitted.] 40 Kan. at 432.

See also *Palmer v. Parish*, 61 Kan. 311, 59 Pac. 640 (1900).

K.S.A. 77-201, *Twenty-third*, states thus:

"The term 'residence' shall be construed to mean the place adopted by a person as his place of habitation, and to which, whenever he is absent, he has the intention of returning."

From the facts stated above, it appears that Mr. Beck has long been a resident of the locality in question, that his residence lies within the representative district, that he has temporarily removed from his former home within the district solely to await construction of a new home at his farm, that he presently intends to construct a new home there, that he has not departed from the district with an intention to abandon his residence there and not to return, that he has continued to receive his mail, exercise his right to vote, and continue his former ties with the locality of his long-established residence, that he presently resides outside the district with a purpose to remain there only temporarily, and only so long as necessary to permit construction of a new home within the district, to which he presently intends to return.

Based solely upon these facts represented in Mr. Beck's letter, viewed in the light of the authorities cited above, it is our opinion that Mr. Beck has not abandoned his residence within the district, and remains a resident of the 64th Representative District. It is not necessary that he be physically present within the district on the day of election, but only that his legal residence be within the district on that day. If, on the day of the November general election, the new home is not completed, and as a result he continues at that time to live in a house outside the boundaries of the district, the above-mentioned facts remaining as described, his legal residence would continue to be within the 64th District, and would not be disqualified by the fact that his temporary home lay outside the district.

We must point out, however, that our opinion is not conclusive upon the question. Article 2, § 8 of the Kansas Constitution states thus, in pertinent part:

"Each house shall establish its own rules; and shall be judge of the elections, returns and qualifications of its own members."

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The decision of each house upon the qualifications of its members is conclusive. *State ex rel. Davis v. Tomlinson*, 20 Kan. 692 (1878)

Yours very truly,



VERN MILLER  
Attorney General

VM:JRM:jsm

cc: Honorable Duane S. "Pete" McGill  
Speaker, House of Representatives  
P.O. Box 493  
Winfield, Kansas 67155

Honorable Richard C. "Pete" Loux  
Minority Leader  
House of Representatives  
309 Century Plaza Building  
Wichita, Kansas 67202