



STATE OF KANSAS

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CURT T. SCHNEIDER  
Attorney General

February 24, 1975

Opinion No. 75- 75

The Honorable Paul Hess  
State Senator  
3rd Floor - State Capitol Building  
Topeka, Kansas 66612

The Honorable Sharon Hess  
State Representative  
3rd Floor - State Capitol Building  
Topeka, Kansas 66612

Dear Mr. and Mrs. Hess:

As a member of the Kansas Senate from the 30th senatorial district, and a member of the Kansas House of Representatives from the 87th representative district, respectively, you advise that a question has been raised whether you satisfy the continuing qualification for membership in these legislative bodies prescribed by Article 2, § 4 of the Kansas Constitution. This provision was adopted by a vote of the people at the general election November 5, 1974, and states thus:

"During the time that any person is a candidate for nomination or election to the legislature and during the term of each legislator, such candidate or legislator shall be and remain a qualified elector who resides in his or her district."

You advise that at the time of the general election on November 5, 1974, you were both registered to vote as qualified electors of the 30th senatorial district and the 87th representative district, residing in an apartment at 888 S. Hydraulic, Wichita, Kansas. Shortly before the 1975 legislative session convened, you rented

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an apartment in Topeka, Kansas, for only the duration of the session, and terminated your occupancy and tenancy of the apartment at 888 S. Hydraulic, in Wichita. You state that at all times since November 5, 1975, it has been and is your intention to return to Wichita at the conclusion of the present legislative session, and to occupy another apartment located in your respective districts.

The question which is raised, apparently, is not whether you have abandoned your Wichita residence merely by taking an apartment in Topeka for the duration of the session, but whether your additional step of releasing and vacating your Wichita apartment upon moving to your Topeka apartment for the session constitutes an abandonment of the residency in your respective districts which you are required to maintain by Article 2, § 4 as a condition of continuing eligibility for service in the Kansas Legislature.

Article 4, § 2 requires not only that the candidate or legislator be a "qualified elector" of his or her district, but one who "resides in his or her district." A qualified elector of the district is, by definition, one who by virtue of legal residence there is entitled to be and is registered to vote therein. The further requirement that the candidate or legislator be not only a "qualified elector" of the district, but one who "resides in his or her district" suggests a requirement in addition to mere legal residence, i.e., that the candidate or legislator must be and remain during the term an actual resident of the district.

K.S.A. 25-407 prescribes certain rules for the determination of residence of a person offering to vote, to govern "so far as they may be applicable;"

First, That place shall be considered and held to be the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

Second. A person shall not be considered or held to have lost his residence who shall leave his home and go into another state or territory, or county of this state, for temporary purposes merely, with an intention of returning.

Third. A person shall not be considered or held to have gained a residence in any county

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of this state, into which he shall have come for temporary purposes merely, without the intention of making said county his home, but with the intention of leaving the same when he shall have accomplished the business that brought him into it . . . ."

In Estate of Schoof v. Schoof, 193 Kan. 611, 396 P.2d 329 (1964), the court summarized the traditional rules governing residence determinations:

"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 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 requisite intent to establish residence therein be present." 193 Kan. at 614. [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 . . . 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

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

So far as concerns the question of legal and voting residence, clearly, a temporary sojourn in the City of Topeka for a temporary purpose, attendance during the legislative session, does not constitute an abandonment of residence previously established in the City of Wichita, for although there has occurred a physical removal to Topeka, it is not accompanied by the necessary intentions, an intent to remain there permanently or for an indefinite period, and an intention not to return. Under the rules set out in K.S.A. 25-407, on the basis of the facts stated above, there is no basis for a conclusion that you have abandoned your residence in your respective districts.

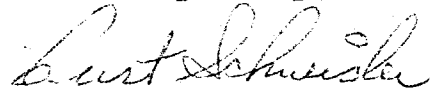
The place of "legal residence" and indeed, that of place of actual residence, should not be confused with one's place of abode. Many circumstances may exist in which a person may be temporarily absent from his city, county or legislative district. Whether there exists at a particular point in time a house, apartment or other place of abode to which the individual may return is not itself determinative of that individual's intention. For example, one's residence may be destroyed by fire, may be sold or rented to another, and, the individual is required to vacate. Taking temporary quarters outside the district under such circumstances, with the intention to return, does not constitute an abandonment of residence there. Similarly, as here, where one voluntarily relinquishes one's place of abode, and temporarily takes another, outside the district, for a temporary purpose, accompanied by a present intention to take another apartment or other quarters in the district at the termination of a concededly temporary sojourn outside the district, here for attendance during the legislative session, there occurs no abandonment of either legal or actual residence, for the temporary physical absence from the district is accompanied by a present intention to return at a definite time, and an intention to remain away for

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only a temporary purpose. The rental or lease of a particular abode, at any given point in time, is but one factor to be considered in determining the intention of a party, which is always the controlling element in any determination of residence. Based solely upon the facts recited above, there is not, in our view, any basis for a conclusion that you have abandoned your residence in your respective legislative districts, and established a separate legal residence outside those districts.

We must point out, however, that Article 2, § 8, "[e]ach house shall be the judge of elections, returns and qualifications of its own members," and its determination is conclusive. State ex rel. Davis v. Tomlinson, 20 Kan. 692 (1877).

Yours very truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj