



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

June 23, 1976

ATTORNEY GENERAL OPINION NO. 76- 187

Mr. Don Vsetecka
Finney County Attorney
114 West Pine Street
Garden City, Kansas 67846

Re: Counties--Offices--Qualifications

Synopsis: Residence in the county is not a qualification for filing, nomination or election to the office of county attorney.

* * *

Dear Mr. Vsetecka:

You inquire concerning the residency requirements, if any, applicable to a person seeking nomination and election to the office of county attorney. You advise that an individual has filed a declaration of candidacy with the election officer of Finney County, listing as his residence an address on West 17th Street, Topeka, Shawnee County, Kansas. He has advised the county election officer that he will not be moving to Garden City until August, 1976. Thus, you inquire whether there is a requirement that he be a resident of the county at either the time of filing or time of nomination.

K.S.A. 19-701, as amended by 1976 House Bill 2252, provides in pertinent part thus:

"Except as otherwise provided by law, beginning with the general election in 1976, a county attorney shall be elected in each county who shall hold office for a term of four (4) years. . . . No person shall be

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eligible for the nomination or election to the office of county attorney of any county unless such person shall have been regularly admitted to practice law within the state of Kansas, and is at the time of nomination and election a regularly qualified practicing [*sic*] attorney of this state."

There is thus no express statutory residence requirement, durational or otherwise, applicable to candidates for the office of county attorney, either at the time of filing, nomination or election. Indeed, there appears to be statutory residence requirement to be satisfied prior to or at the time of qualifying for office after election.

Nor is there any warrant for inferring any residence requirement as a condition of eligibility for nomination or election. At 63 Am.Jur.2d, *Public Officers and Employees*, § 47, the writer states thus:

"A candidate for election or appointment to an office of a district or other political subdivision or unit may be required by provision of the constitution, statutes, or ordinances to be a resident or inhabitant thereof. But where residence within the district or political unit is not made a condition of eligibility to holding office therein by express provisions of the law, such residence is generally considered not necessary, even though eligibility to the same office may require a stated period of residence in the state. However, there are some decisions which lend support to the view that even in the absence of an explicit statutory or constitutional provision on the subject, residence within the political unit for which a public officer is elected or appointed is a prerequisite of eligibility."
[Footnotes omitted.]

In an annotation at 120 A.L.R. 672, the writer states that the great weight of authority reported at that time, in 1939, supported the view that residence within the district or other political unit for which one was elected or appointed was not a necessary qualification of an officer or candidate, in the absence of an express constitutional or statutory provision requiring such residence or that the candidate

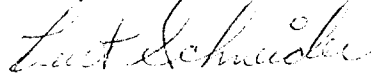
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or officer be an elector of the political unit. Our review of subsequent reported decisions indicates no change in the clear weight of authority.

Formerly, it could be argued that residence was necessarily implied as a qualification for office by K.S.A. 19-2608, which provided that "ceasing to be an inhabitant of the county for which he was elected or appointed" was a ground upon which every county office would become vacant. This provision was repealed by 1976 House Bill 2962, however.

Thus, there exists no constitutional or statutory basis, either express or necessarily implied, for concluding that residence in the county is a qualification for filing, nomination or election to the office of county attorney.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj