

STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

August 9, 1976

ATTORNEY GENERAL OPINION NO. 76- 247

Mr. Claude S. Heath
Wichita County Attorney
P. O. Box 299
Leoti, Kansas 67861

RE: Counties - Sheriff - Qualifications

SYNOPSIS: Any person who does not satisfy the durational residence qualifications of K.S.A. 19-801b(a) is not eligible for nomination or election to the office of sheriff. If nominated and elected, such person acquires no legal claim or title to the office, or to the compensation which attaches to said office.

* * *

Dear Mr. Heath:

You inquire whether a person who has been a resident of the county for less than one year preceding July 1, 1976, but who conducts a successful write-in campaign for nomination and election to that office may serve in that position.

K.S.A. 19-801b(a) states in pertinent part thus:

"No person shall be eligible for nomination, election or appointment to the office of sheriff unless such person shall possess and meet the following minimum qualifications:

* * *

"(3) 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"

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At 63 Am.Jur.2d, *Public Officers and Employees*, §38, the writer states thus:

"To hold a public office, one must be eligible and possess the qualifications prescribed by law, and an election or appointment to office of a person who is ineligible or unqualified give him no right to hold the office." [Footnotes omitted.]

Nomination or election to office gives the person so nominated or elected no claim or title to the office whatever, if the person does not satisfy the durational residence requirements quoted above. Similarly, such a person has no lawful claim to the compensation which attaches to the office. *Bailey v. Turner*, 108 Kan. 856, 197 Pac. 214 (1921). The election of an unqualified person is legally a nullity, for the voters by majority vote may not waive the qualifications for the office duly prescribed by law.

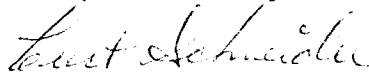
The durational residence requirement was first enacted in 1972, as part of an enactment designed to improve the professional qualifications of sheriffs throughout the state. See ch. 75, L. 1972. It is time to reevaluate the usefulness of the one-year residence requirement, in my judgment. On its face, it is only remotely, if at all, related to the professional law enforcement qualifications of potential candidates. It may operate to keep from office possible candidates who have had many years of professional police experience, but only a few months of residence in a particular Kansas county. Certainly, many Kansas cities have found such a requirement unnecessary to assure the qualifications of their chief police officials. Indeed, the legislature itself has chosen arbitrarily to exempt from the requirement all Kansas counties with a population of not more than 2,800 with an assessed tangible valuation of more than \$21,000 and not more than \$30,000,000. The one-year residence requirement serves no clearly apparent purpose other than to prevent often highly-qualified persons from seeking the office, and should be reassessed.

If the candidate is nominated, and not challenged, however thereafter, his or her name must appear on the general election

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ballot. The election is subject to challenge thereafter on the ground of lack of qualification. If no challenge is timely filed, either after nomination or election, title to the office is subject to challenge by the State of Kansas, through either this office or through that of the county attorney.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:en