



STATE OF KANSAS

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February 1, 1982

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ATTORNEY GENERAL OPINION NO. 82.- 18

Alice K. Sander
City Clerk
City of Victoria
1005 4th Street
Victoria, Kansas 67671

Re: Cities, Third Class--Election, Appointment and
Removal of Officers--Qualifications of Officers

Synopsis: If a councilman of a city of the third class removes his residence from the territorial limits of the city, he is no longer a "qualified elector" of the city, and a vacancy in the office occurs automatically. Cited herein: K.S.A. 15-209, 77-201; Kan. Const., Art. 5, §1.

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Dear Ms. Sander:

You request our interpretation of K.S.A. 15-209. Specifically, you inquire as to whether an incumbent city councilman, who plans to move outside the city limits to operate a farm, but who will also maintain a place of business in the city and pay city taxes, may continue to hold the office of councilman.

K.S.A. 15-209, which statute is controlling as to qualifications of city officers in third class cities (in the absence of a duly adopted charter ordinance), prescribes, with certain exceptions not relevant herein, that city officers shall be "qualified electors" of the city. In State ex rel. Blake v. Dunn, 118 Kan. 184 (1925), the meaning of the term "qualified elector" was construed in relation to a statutory requirement that a petition be signed by "not less than twenty-five percent of the qualified electors of such city." The court stated as follows:

"The first question is, Who are 'qualified electors' within the meaning of the statute? It is well settled in this state that the legislature may require registration as a prerequisite to the right to vote. (The State v. Butts, 31 Kan. 537, 2 Pac. 618.) In the cities where registration is required, an elector is a person having the constitutional qualifications of an elector and who is duly and properly registered. (Coney v. City of Topeka, 96 Kan. 46, 149 Pac. 689.) In Clayton v. Hill City, 111 Kan. 595, 207 Pac. 770, the term 'qualified electors' was construed to mean persons entitled to vote. Hence the words 'qualified electors' in this statute means persons who have the constitutional (Const., art. 5, §§1, 4) qualifications of an elector and who are duly and properly registered." 118 Kan. at 186-187.

In accordance with above-quoted statements in the Dunn case, it is our opinion no person is qualified to hold the office of councilman in a city of the third class unless he is a person who possesses the qualifications of a voter under Article 5, §1 of the Kansas Constitution, and is registered to vote as required by law. One of the constitutional qualifications of a voter is residence "in the voting area in which he or she seeks to vote." Kan. Const., Art. 5, §1. Thus, one may not hold the office of councilman in a city of the third class unless he "resides" in the city. The term "residence" is defined in K.S.A. 77-201 as follows:

"The term 'residence' shall be construed to mean the place adopted by a person as such person's place of habitation, and to which, whenever such person is absent, such person has the intention of returning. When a person eats at one place and sleeps at another, the place where such person sleeps shall be deemed such person's residence."
(Emphasis added.)

In our judgment, the fact that a councilman maintains a place of business in a city has no relevance whatsoever to the question of his qualification to remain in office. If a councilman of a city of the third class removes his residence from the territorial

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limits of the city, he is no longer a registered voter of the city, nor a "qualified elector," and a vacancy in the office occurs automatically. See Barrett v. Duff, 114 Kan. 220, 232 (1923), and Leek v. Theis, 217 Kan. 784, 790 (1975).

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm