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ATTORNEY GENERAL OPINION NO. 92- 30

The Honorable Bill Graves
Secretary of State
2nd Floor, State Capitol
Topeka, Kansas 66612-1594

Re: Courts--District Courts; Judicial Reapportionment Act (1968)--Residence Requirements of Judges of the District Court

Synopsis: In order to be eligible for nomination, election, or selection to the first of the three district judge positions of the 20th judicial district, an individual must be a resident of Stafford, Russell, Ellsworth, or Rice county at the time of nomination, election, or selection. Nomination, election, or selection to the two remaining district court positions may be conferred only on individuals who are residents of Barton county at the time of nomination, election, or selection. Cited herein: K.S.A. 4-202; 4-221; 4-221 (Ensley 1985); 20-301a; 20-331; 20-334; 20-336; 20-338 (Ensley 1985); 20-364; Kan. Const., art. 3, § 6; L. 1968, ch. 385, § 36; L. 1976, ch. 146, § 10; L. 1980, ch. 4, § 6; L. 1981, ch. 132, § 1, L. 1986, ch. 115, §§ 18, 39, 106.

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Dear Secretary Graves:

As secretary of state, you request our opinion regarding the residence requirements of judges of the district court for the 20th judicial district. Specifically, you ask: (1) whether

persons filing as candidates for two of the three district judge positions in the 20th judicial district must be residents of Barton county; (2) whether the district magistrate judge in Rice county would be required to resign such position and establish residence in Barton county before seeking the position of district judge; and (3) whether a resident of the 20th judicial district who resides outside Barton county may be considered for filling a vacancy in the position of district judge.

Pursuant to section 6 of article 3 of the Kansas constitution, the state has been divided into judicial districts. See K.S.A. 4-202 et seq. The district courts are served by two classes of judges of the district court: district judges and district magistrate judges. K.S.A. 20-301a. District judges are elected by the electors of the respective judicial districts unless the electors of a judicial district have adopted a method of nonpartisan selection. Kan. Const., art. 3, § 6. Likewise, district magistrate judges are elected by the electors of the county where the judges' positions are located unless a proposition for nonpartisan selection of district magistrate judges has been approved in the judicial district. K.S.A. 20-336.

The 20th judicial district consists of the counties of Stafford, Barton, Russell, Ellsworth and Rice, and is served by three district judges. K.S.A. 4-221. The 20th judicial district is also served by four district magistrate judges, with position one in Ellsworth county, position two in Rice county, position three in Russell county and position four in Stafford county. K.S.A. 20-338. The district judges and district magistrate judges of the 20th judicial district are elected rather than selected on a nonpartisan basis.

The interpretation of a statute is a question of law and it is the function of the court to interpret the statute to give it the intended effect. Unified School District No. 279 v. Sec'y of the Kansas Department of Human Resources, 247 Kan. 519, 524 (1990). The fundamental rule of statutory construction is that the purpose and intent of the legislature govern when that intent can be ascertained from the statute. Id. at 527. In determining legislative intent, courts are not limited to a mere consideration of the language employed but may properly look into the historical background of the enactment, the circumstances attending and subsequent to its passage, the purposes to be accomplished and the effect the statute may have under the various constructions suggested.

Joe Self Chevrolet, Inc. v. Board of County Comm'rs of Sedgwick County, 247 Kan. 625, 633 (1990). A statute should not be given a construction that leads to uncertainty, injustice, or confusion if possible to construe it otherwise. State, ex rel. Stephan v. Kansas Racing Comm., 246 Kan. 708, 719 (1990). Furthermore, a construction that makes part of the legislative act surplusage should be avoided if reasonably possible. Id. It is presumed that the legislature, in amending a statute, acted with full knowledge and information as to the subject matter of the statute, as to prior and existing legislation on the subject of the statute, and as to judicial decisions with respect to prior and existing law. State v. Coley, 236 Kan. 672, 675 (1985).

Residence requirements of judges of the district court are set forth in K.S.A. 20-331. (The term judge of the district court includes a district judge and a district magistrate judge. K.S.A. 20-301a.)

"(a) Except as provided in subsection (b), any person who has the qualifications prescribed for a district judge by K.S.A. 20-334 shall be eligible for nomination, election or appointment to the office of judge of the district court in any judicial district. If such person is not a resident of the judicial district at the time of nomination, election or appointment, such person shall establish residency in the judicial district before taking the oath of office and shall maintain residency while holding office.

"(b) No person shall be eligible for nomination, election or appointment to the office of judge of the district court in any county of any judicial district for which there has been established residence requirements for the holding of such office if such person is not a resident of the county at the time of nomination, election or appointment." K.S.A. 20-331.

As originally enacted, K.S.A. 20-331 established similar residence requirements for judges of district courts in all judicial districts. L. 1968, ch. 385, § 36 stated that no person was eligible for nomination, election, or appointment to the office of judge of the district court of any judicial

district unless the person was a resident of the judicial district at the time of nomination, election, or appointment, and if legislation prescribed that the judge be a resident of a particular division (county) within the judicial district, the person was required to be a resident of the division (county) at the time of nomination, election, or appointment. In L. 1980, ch. 44, § 6, the residence requirements were relaxed for those judges of district courts in judicial districts in which no county residence requirements were set forth. Such judges were required to be residents of the judicial district at the time of taking the oath of office and while holding office. However, those judges serving a judicial district for which residence in a specific county was required continued to be subject to the requirement that they be a resident of the county at the time of nomination, election, or appointment. Although it appears that maintaining the county residence requirement may have been unintentional, such residence requirement was ratified when it was clearly set forth in L. 1981, ch. 132, § 1, in which the statute was amended to its present form. Therefore, a judge serving in a judicial district for which a county residence requirement is set forth must be a resident of the county at the time of nomination, election, or appointment. K.S.A. 20-331(b). In a judicial district which is not subject to a county residence requirement, the judge must be a resident of the judicial district at the time of taking the oath of office and while holding office. K.S.A. 20-331(a). See K.S.A. 20-334.

K.S.A. 4-221 states:

"The counties of Stafford, Barton, Russell, Ellsworth and Rice shall constitute the 20th judicial district. There shall be three district judges in such district. The judge holding one of the district judge positions shall be a resident of Stafford, Russell, Ellsworth or Rice county and the judge holding another such position shall be a resident of Barton county. The position of the third district judge shall be in Barton county." (Emphasis added.)

A county residence requirement is clearly established for two of the three district judge positions of the 20th judicial district. Therefore, pursuant to K.S.A. 20-331, a person is

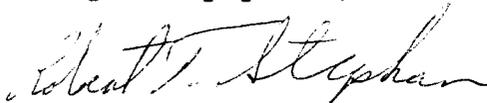
not eligible for nomination, election, or appointment to the first of the three district judge positions of the 20th judicial district unless such person is a resident of Stafford, Russell, Ellsworth, or Rice county at the time of nomination, election, or appointment to the position of district judge. Likewise, a person must be a resident of Barton county at the time of nomination, election, or appointment to the second of the three positions of district judge of the 20th judicial district.

In order to determine whether the third district judge must, prior to nomination, election, or selection to the position of district judge of the 20th judicial district, be a resident of Barton county, a review of the history of the district court is necessary. As originally enacted, K.S.A. 20-301a recognized three classes of judges of the district court -- district judges, associate district judges and district magistrate judges. L. 1976, ch. 146, § 10. In 1983, the legislation enacted K.S.A. 20-364 which provided for the abolishment on January 12, 1987 of all associate district judge positions. "On or after January 12, 1987, there is hereby created, in each judicial district, new district judge positions equal in number to the associate district judge positions abolished in the district. . . ." K.S.A. 20-364(b). At the time of elimination of the positions of associate district judge, the 20th judicial district was served by: two district judges, one of whom was a resident of Barton county and the other a resident of a county other than Barton, K.S.A. 4-221 (Ensley 1985); one associate district judge in Barton county, K.S.A. 1985 Supp. 20-338 (Ensley 1985); and four district magistrate judges, K.S.A. 1985 Supp. 20-338 (Ensley, 1985). After January 12, 1987, the one associate district judge position in Barton county was eliminated and a new district judge position was created. L. 1986, ch. 115, §§ 18, 39, 106. K.S.A. 20-364 provides in part:

"(e) If it is provided by law that an associate district judge position eliminated pursuant to this section shall be in a particular county and if a new division of the district court is created to replace that associate district judge position, any district judge of the new division of the district court shall be required to be a resident of the county in which the former associate district judge position was located."

The last sentence of K.S.A. 4-221 stating that "[t]he position of the third district judge shall be in Barton county," is an acknowledgement of the county residence requirement prescribed by K.S.A. 20-364(e). The provision was part of a cleanup bill adopted in 1986. Minutes, Senate Committee on Judiciary, March 24, 1986; Minutes, House Committee on Judiciary, March 5, 1986. Therefore, all three district judges of the 20th judicial district are subject to a county residence requirement, and must be residents of the respective counties at the time of nomination, election, or selection. In order to be eligible to receive nomination, election, or selection to the first of the three district judge positions of the 20th judicial district, an individual must be a resident of Stafford, Russell, Ellsworth, or Rice county at the time of nomination, election, or selection. Nomination, election, or selection to the two remaining district judge positions may be conferred only on individuals who are residents of Barton county at the time of receiving the nomination, election, or selection.

Very truly yours,



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