



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 88- 149

William H. Dye
Foulston, Siefkin, Powers & Eberhardt
700 Fourth Financial Center
Broadway at Douglas
Wichita, Kansas 67202

Re: Elections -- School District Elections -- Change of
Residence of Board Member Outside School District;
Residence defined

Synopsis: To determine whether a member of a board of
education of a unified school district has changed
residence, thereby disqualifying that board member
from service on the board, the member's actions and
intention must be considered by the county election
officer. Cited herein: K.S.A. 25-108, 25-407,
25-2022a; K.S.A. 1987 Supp. 77-201, Twenty-third.

* * *

Dear Mr. Dye:

As attorney for Unified School District no. 386, you have
requested our opinion concerning the change of residence of a
board member to a location outside of the district.
Specifically, you ask what criteria is to be applied to
determine whether a board member has actually changed
residence.

The relevant statute states in part:

"In the event a member of a board of education establishes residence outside the school district in which such member resided at the time of election, a vacancy in the membership of the board shall exist as of the date upon which the determination is made by the county election officer of the home county of such school district that a change of residence has occurred, and such member shall no longer be eligible to serve on the board of education of such school district." K.S.A. 25-2022.

The term residence is defined by statute as

"the place which is adopted by a person as the person's place of habitation and to which, whenever the person is absent, the person has the intention of returning. When a person eats at one place and sleeps at another, the place where the person sleeps shall be the person's residence." K.S.A. 1987 Supp. 77-201, Twenty-third; compare, K.S.A. 25-407 (determination of residency of voter, does not include last sentence).

We have previously opined that Kansas law permits a person to have only one residence. See Attorney General Opinion No. 87-7. Establishing or changing a residence involves two elements: the act of being present at a locality; and the intent to return to that locality when absent. Littell v. Millemon, 154 Kan. 670, 675 (1942). The element of intent may arise at the time of removal to the new locality, or may arise subsequently. The length of time that a person remains at the locality is not important, except as indicia of intent. Irvin v. Irvin, 182 Kan. 563, 567 (1958).

No clear test has been developed which, as a matter of law, determines residence. Rather, the question is one for the trier of fact. See State, ex rel., v. Jones, 169 Kan. 521, 526 (1950) (mail delivery, telephone directory listing, personal property assessment, automobile license considered under particular facts); compare, Beard v. Montgomery Ward & Co., 215 Kan. 343, 348 (1974) (individual who brought personal belongings in a suitcase each time he visited,

departed with the same property leaving only some pictures was casual visitor, not resident); see also, Friedman v. Alliance Ins. Co., 240 Kan. 229, 237 (1986) (factors considered in determining whether child is resident of parent's household for purpose of insurance coverage). Regarding K.S.A. 25-2022a, the determination is made by the county election officer.

The facts which you have presented involve a board member of one school district who has been appointed as superintendent of another district, and has established living quarters in the other district. In light of these facts, we feel compelled to point out that K.S.A. 25-108 does not resolve the question of residence for board membership qualification purposes. That statute states that,

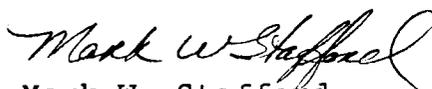
"for the purpose of voting, no person who is in the employment of this state or any municipal subdivision thereof in any civil capacity shall be deemed to have gained or lost residence by reason of such employment, but all such officers or employees shall be considered as residents of the place from whence they were elected or appointed." K.S.A. 25-108.

We believe that this section is not controlling, as it applies only for the purpose of voting. It is intended to avoid disenfranchising those persons who set up temporary living quarters incidental to employment with the government. See Uhls v. Allard, 69 Kan. 825 (1904).

In conclusion, it is our opinion that to determine whether a member of a board of education of a unified school district has changed residence, thereby disqualifying that board member from service on the board, the member's actions and intention must be considered by the county election officer.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Mark W. Stafford
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