

February 19, 1971

Answer by Letter - Klaffenbach

OPINION LETTER NO. 153

Honorable Tony Heckemeyer
State Representative
District No. 157
Room 302E, Capitol Building
Jefferson City, Missouri 65101



Dear Representative Heckemeyer:

This letter is in response to your opinion request in which you pose the following questions:

"Is it possible for a person to be simultaneously a resident of two states with respect to the residency requirements for holding office in the State of Missouri?"

"What factors determine residency here in Missouri and is there any statutory method for determining residency?"

"Would the signing of a document in another state, which under law is considered evidence to the effect that the signer of such document is a bona fide resident of that state, void a residency in Missouri?"

"Are the facts that the personal property tax has not been paid here in Missouri, as required by law, and that the physical residence of said person and family is not within the boundaries of this state reliable factors in determining this case?"

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First of all, we observe that the Springfield Court of Appeals in Clarkson v. MFA Mutual Insurance Company, 413 S.W.2d 10 (1967) at l.c. 13-14 amply illustrated the difficulties encountered in the defining "residence" by their holding from which we quote extensively as follows:

"Literally hundreds of cases have dealt with the meaning of 'reside' or 'live.' One bold, hardy explorer in this judicial jungle years ago listed more than one hundred reported decisions on each side of the question as to whether 'residence' and 'domicile' are synonymous, with Missouri cases cited in each list. Kennan on Residence and Domicile (1934), §10, pp. 22-27. Our Supreme Court, en banc, has observed that "[t]he words "residence," "place of abode" and "domicile" have many meanings in different connections * * * [In re Duren, 355 Mo. 1222, 1232, 200 S.W.2d 343, 349-350, 170 A.L.R. 391]; and, more recently this court, per our departed brother, Ruark, J., in eschewing any attempt to define 'residence', graphically likened that word unto 'a slippery eel.' State v. Tustin, Mo.App., 322 S.W.2d 179, 180. Our present exploration convinces us that the 'eel' has undergone no metamorphosis. In fine, we must regard the terms 'reside,' 'resident' and 'residence' as ambiguous, elastic and relative, and the synonymous terms 'live' and 'living' as afflicted with the same frailties. Clark v. Industrial Accident Com'n. of Cal., 129 Cal.App. 536, 19 P.2d 44, 46.

"Although the instant appeal presents no need for us to essay definition of any of the foregoing terms, a task from which others less timorous than we have stood aloof, certain relevant judicial and statutory pronouncements should be noted here. At common law, the terms 'domicile' and 'residence' or 'resident' were used interchangeably and were treated as being synonymous [State ex rel. Kelly v. Shepperd, 218 Mo. 656, 666, 117 S.W. 1169, 1171-1172 (2); State ex rel. Stoffey v. La Driere, Mo.App., 273 S.W.2d 776, 781 (13)], and 'residence' and 'resident' are frequently, although not always, used in that sense now. Phelps v. Phelps,

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241 Mo.App. 1202, 1209, 246 S.W.2d 838, 844; State upon Inf. of Reardon v. Mueller, Mo.App., 388 S.W.2d 53, 58(8). But in whatever context the latter terms are used, they almost invariably imply and connote 'something of permanence or continuity at least for an indefinite period, to the exclusion of another contemporaneous residence' [In re Duren, supra, 355 Mo. at 1232, 200 S.W.2d at 350], that is, 'intended permanency' * * * not in the sense that the residence must never be changed, but in the sense that there is no intention to change it.' McDowell v. Friedman Bros. Shoe Co., 135 Mo. App. 276, 283, 115 S.W. 1028, 1031. In this connection, we note also that our General Assembly has declared that '[a]s used in the statutory laws of this state * * * "[p]lace of residence" means the place where the family of any person permanently resides in this state, and the place where any person having no family generally lodges' [V.A.M.S. § 1.020 (9)], and that the St. Louis Court of Appeals has pointed out that this statutory definition 'merely codifies the presumption of law that would in any event exist without it.' State upon Inf. of Reardon, supra, 388 S.W.2d at 58. Although not entirely so [State upon Inf. of Reardon, supra, 388 S.W.2d at 60(10)], '[r]esidence is largely a matter of intention' [In re Lankford's Estate, 272 Mo. 1, 9, 197 S.W. 147, 148(2); In re Ozias' Estate, Mo.App., 29 S.W.2d 240, 243], hence an established residence is not lost by temporary absence therefrom, either on business or on pleasure, with no intention to abandon that residence or acquire another."

In answer to your first question with respect to whether or not a person may simultaneously be a resident of two states with respect to Missouri residency requirements for holding office, our answer is that, at least generally speaking, a person may not be a resident of another state and at the same time meet residency requirements for an office in Missouri.

In answer to your second question concerning what factors determine residency in Missouri and whether there is any statutory

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method for determining residency, we believe that the above quotation from the Clarkson case answers your question.

In answer to your third question concerning whether the signing of a document in another state declaring a residence in that other state would void a residency in Missouri, our answer is that the execution of such a document would be only one item of evidence to be considered with respect to such person's actual and bona fide residency in Missouri.

In answer to the first part of your fourth question concerning whether the payment of personal property tax in Missouri is a factor in determining residency, it is our view, of course, that there is a presumption that a person will follow the requisites of the law in the payment of his taxes and that if he does not pay his taxes as a resident such a fact would be considered in evidence, but would not be conclusive. Likewise, with respect to the second part of your fourth question concerning "physical residence" of a person outside the limits of the state of Missouri, as has been noted in the Clarkson case, temporary absence from the state does not imply the abandonment of an established residence if there is no attempt to abandon that residence or acquire another. This again is another factor to be considered but is not conclusive.

Finally your opinion request asks concerning whether a certain individual qualifies as magistrate judge by reason of a question concerning his residency. Whether or not this individual does qualify as magistrate judge is a mixed question of law and fact and an actual controversy and therefore a question we do not purport to be able to determine by an opinion of this office.

Very truly yours,

JOHN C. DANFORTH
Attorney General