

TOWNSHIPS:
TOWNSHIP ROADS:

The signature of a husband and wife who reside within a township are counted as two of the twelve petition signatures for purposes

of Section 228.110. Residents who sign the petition may include residents of the township or townships through which the road runs, whose land is not contiguous with the road at issue.

OPINION NO. 38-2005

July 8, 2005

Honorable Dan Clemens
Missouri State Senator
State Capitol Building
Jefferson City, MO 65101

Dear Senator Clemens:

You have requested an opinion on the following two questions:

- (1) Will the signatures of a husband and wife who live in a township constitute two of the twelve required signatures required by Section 228.110, RSMo?
- (2) Under Section 228.110, RSMo, can the twelve residents of a township reside anywhere within the township the road runs through, or must the twelve residents own property that is contiguous with the road?

Section 228.110, RSMo (2000), provides, in pertinent part, as follows:

1. *Any twelve residents of the township or townships through which a road runs* may make application for the vacation of any such road or part of the same as useless, and the repairing of the same an unreasonable burden upon the district or districts.... [Emphasis added.]

Your first question is whether a husband and wife who live in a township are considered one, or two, of "any" of the "twelve residents" for purposes of the signature requirement of Section 228.110. The answer is two.

We are guided by the plain meaning of the words used in a statute, and look to dictionary definitions where, as here, the Legislature has not provided definitions. *Southwestern Bell Yellow Pages, Inc. v. Director of Revenue*, 94 S.W.3d 388, 391 (Mo. banc 2003). First, the statute contains no explicit limitation concerning the counting of signatures of residents who are married.

Second, the broad, dictionary definitions of the words used encompass married persons. As noted, the word "any" qualifies "twelve residents" in section 228.110.1. "Any" means "1: one indifferently

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out of more than two ... a: one or another ... b: one no matter what one; EVERY ... 3a: great, unmeasured, or unlimited in amount, quantity, number, time or extent....” WEBSTER’S THIRD NEW INT’L DICTIONARY, p. 97 (1993). A “resident” is “1 : one who resides in a place : one who dwells in a place for a period of some duration....” *Id.* at 1931.

The Legislature’s 1990 amendment of Section 228.110, replacing “any twelve freeholders” with the current term, “any twelve residents,” L. 1990, H.B. No. 1070, is consistent with this broad reading of the statute. A “freeholder” is “one who possesses a freehold.” BLACK’S LAW DICTIONARY, p. 675 (7th ed. 1999). A “freehold” is “an estate of land held in fee simple, in fee tail or for term of life.” *Id.* The 1990 amendment affords the opportunity to petition for vacation of a road to more persons – not just those who possess an estate of land in a township, but those who reside there. That the Legislature amended the statute to authorize more persons to sign a petition is consistent with reading the plain language of the statute to authorize each married person to sign a petition.

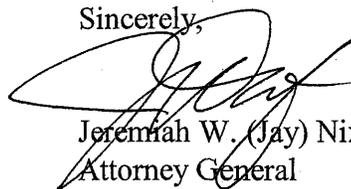
Your second question is whether only those residents who own property that is contiguous with the road at issue may sign a petition. The answer is no. As noted above, we look to the plain language of section 228.110.1. It contains no such limitation – the statute simply requires that persons who sign must be “residents of the township or townships through which [the] road runs.” And where contiguity of the property is pertinent, the Legislature will explicitly so provide. *See* section 228.110.2 (requiring that notice be “personally served on all the persons residing in the district whose lands are crossed or touched by the road proposed to be vacated”).

Our interpretation is reinforced by the case, *In the Matter of The Big Hollow Road; England, et al. v. Henry Bailey, et al.*, 40 Mo.App. 363 (Mo. App. 1890), where the court construed a predecessor of the current law, Section 29, Sess. Acts 1887, p. 252. Because that version of the law did not explicitly “confine the right of filing” a petition to those persons “of the township whose lands are crossed or touched by the road proposed to be vacated,” the court held that contiguity was not a prerequisite to participation in filing the petition. *Id.*

Conclusion

It is the opinion of this Office that the signature of a husband and wife who reside within a township are counted as two of the twelve petition signatures for purposes of Section 228.110. It is also the opinion of this Office that residents who sign the petition may include residents of the township or townships through which the road runs, whose land is not contiguous with the road at issue.

Sincerely,



Jeremiah W. (Jay) Nixon
Attorney General