

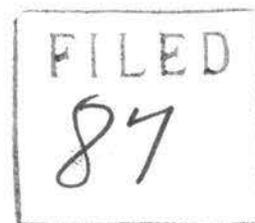
ELECTIONS:
CANDIDATES:
COMMITTEEMEN:
COUNTY CLERK:

A county clerk may refuse to place the name of a candidate he believes to be ineligible on the ballot and his action is subject to review by the courts. A person cannot have a residence for voting purposes only which is separate from his legal residence.

OPINION NO. 87

April 11, 1972

Honorable Rupert G. Usrey
Prosecuting Attorney
Holt County, Courthouse
Oregon, Missouri 64473



Dear Mr. Usrey:

This letter is in answer to your opinion request in which you ask:

"1. May the County Clerk consider facts other than those contained in the declaration of candidacy of a township committeeman to determine whether or not the candidate is eligible to have his name printed on the primary ballot?

"2. May a person maintain his home and family in one township and his legal or voting residence in another township and thereby be a qualified elector in a township other than that in which he lives?"

You also state that:

"Certain persons have filed a declaration of candidacy for township committeeman or committeewoman, alleging in such declaration, residence in a township other than that in which they live and maintain their homes and families. As I understand it, these candidates have always voted in the township from which they seek to be elected, and apparently are of the

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opinion that they may maintain a legal and voting residence in the township and represent it as committeeman, even though they no longer live in the township."

Section 120.770, RSMo 1969 provides in part:

". . . Any qualified elector in any such voting precinct or district may have his or her name printed on the primary ballot or party ticket on which he or she may desire to become a candidate for committeeman or committeewoman by complying with the provisions of section 120.340 and, in all counties in this state now or hereafter containing a city of the first class, by also paying the sum of five dollars to the treasurer of the county committee of the party on whose ticket he or she seeks election."

Section 120.340, RSMo 1969 provides for the time of filing a declaration of candidacy and the form to be used in primary elections. Further, Section 120.370, RSMo 1969 provides that for certain offices, including the office of committeeman or committeewoman, the declaration must be filed in the office of the county clerk in third class counties.

In answer to your first question, the case of Mansur v. Morris, 196 S.W.2d 287 (Mo. 1946) holds that the duty of the county clerk is not purely ministerial. While we find no other Missouri cases on this precise point it is our view that the clerk may refuse to place the name of a candidate he believes to be ineligible on the ballot. In reaching this conclusion we note that the courts have consistently refused to grant relief in mandamus actions by persons requesting that their names be placed on the ballot unless the relator has shown that he is eligible and entitled to have his name placed on the ballot. See State ex rel. Dodd v. Dye, 163 S.W.2d 1055 (Mo.App. 1942); State ex rel. Christian v. Lawry, 405 S.W.2d 729 (Mo.App. 1966); and State ex rel. Scott v. Dircks, 111 S.W. 1 (Mo. 1908).

In other states the courts have held that while the election officers' functions are generally ministerial, the writ of mandamus will be denied when the relator is not entitled to have his name placed on the ballot because he is not eligible for the office. Application of Lindgren, 113 N.E. 353 (N.Y.App. 1921); Davis v. Crawford, 116 So. 41 (Fla.Sup. 1928).

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Our conclusion then is that the clerk may refuse to place the name of a candidate he believes to be ineligible on the ballot and the question of eligibility will then be determined by the courts if an action is brought to require the clerk to place the candidate's name on the ballot.

Your second question asks whether a person may maintain his home and family in one township and his legal or voting residence in another township and thereby be a qualified elector in a township other than that in which he lives. We also understand from you that in the circumstances presented there is no evidence to indicate that the person actually has a legal residence in the township in which he has been voting and for which he has filed his declaration of candidacy.

Of course, a person cannot have a separate residence only for voting purposes. Hall v. Schoenecke, 31 S.W. 97 (Mo. 1895). However the legal questions in determining residency are numerous as indicated by the holding of the Springfield Court of Appeals in Clarkson v. MFA Mutual Insurance Company, 413 S.W.2d 10 (1967), quoted at length in our enclosed Opinion No. 153, dated February 19, 1971, to Heckemeyer. See State ex inf. McKittrick v. Jones, 185 S.W.2d 17 (Mo. 1945). We also enclose Opinion No. 387, dated September 3, 1971, to Broomfield and Opinion No. 168, dated August 7, 1969 to Gum, relative to this question.

In direct answer to your second question, if it is determined that a person is not a bona fide resident of the township at the time he files his declaration he is not eligible to have his name printed on the ballot. Since such a determination would controvert the declaration of residence and of elector qualification (see form of declaration, Section 120.340, RSMo 1969) it obviously gives rise to an actual contest of the factual situation which we are not able to decide. In this respect we refer you to page 5 of our Opinion No. 387, 1971, wherein we stated that, generally speaking, a person resides where his family permanently resides, but that under the Clarkson holding the residence of the family is not conclusive. How the clerk acts in any particular case is a matter to be determined by the clerk after consideration of all the facts involved.

CONCLUSION

It is the opinion of this office that a county clerk may refuse to place the name of a candidate he believes to be ineligible on the ballot and his action is subject to review by the courts. A person cannot have a residence for voting purposes only which is separate from his legal residence.

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The foregoing opinion which I hereby approve was prepared by my assistant, John C. Klaffenbach.

Very truly yours,



JOHN C. DANFORTH
Attorney General

Enclosures: Op. No. 153
2/19/71, Heckemeyer

Op. No. 387
9/3/71, Broomfield

Op. No. 168
8/7/69, Gum