

Opinion No. 510**Elections—Residence—School Districts
—Challenge of Elector.**

HELD: The fact that an elector of one school district purchased land in another school district has no bearing upon his right to vote at an election in the first district unless it can be shown that he intended to change his place of residence to such new district and had done so before such election.

April 12, 1934.

You request an opinion from this office in the following matter:

The votes of two parties desiring to vote were challenged. These two parties had resided in this district on a rented tract of land for several years prior to the election and still farm land in the district. About March 12th these parties who are brothers, purchased under contract a tract of land in an outside district and moved their personal effects there to a house situated on that tract of land and have since eaten and slept in this house, returning to land in this particular district to herd their cattle daily and have been physically present in the district every day since March 12th and to date of election. It is presumed that these men will continue with their farming operations on their land on the place which they have purchased and it is likewise presumed that they will continue to live there until default in their contract, at least, which cannot be before this fall.

The question then is whether or not these parties were qualified voters in the district from which they moved on March 12th and likewise whether or not they had a right to vote at any school district election.

Section 574, R. C. M., 1921, provides the rules for determining residence of voters and provides, "A change of residence can only be made by the act of removal joined with the intent to remain in another place. There can only be one residence. A residence cannot be lost until another is gained." (subdivision 9.)

In *Sommers v. Gould*, 53 Mont. 538, the Supreme Court said: "The residence of a voter must be determined from his acts and intent." 54 C. J. 708, on the subject of residence, states "The meaning" (of residence) "when employed in a statute is often provocative of dispute, often making it difficult to give an exact definition. * * * ,for when used in statutes it has different meanings in different connections. * * * As its statutory definition depends upon the legislative purpose as well as on the context of the statute, it must be construed in every case in accordance with the object and intent of the statute in which it occurs; hence its meaning is to be determined from the facts and circumstances taken together in the particular case."

As Section 574 relates specifically to the registration of voters the provisions of that section control where it lays down any rule. Subdivision 9, quoted above, was quoted in *Sommers v. Gould*, supra, and is directly in point in the case you submit.

The fact that the two brothers had land in another school district than the one where their right to vote was challenged, has no bearing on the question involved here, unless it can be shown that they intended to change their place of residence to the new location. They might own land in a dozen school districts, but, of course, could vote in but one. Even though they may intend to change their place of residence to the new location they may not have intended to make such change until after the date of the election or some subsequent date. We think the statutes grant them the privilege of determining when they will relinquish their old residence for the new. If the broth-

ers contend that it was their intention to retain their voting residence in the old district, backed by the fact that they still have property interest in that district, we think they established a right to vote there that could not be easily overcome. From some facts given it might appear that they intended to establish a new residence, but the intent to do so and the particular date of the change is known only to them.

We are, therefore, of the opinion that the challenge of their right to vote cannot be sustained.