

Opinion No. 65.

School Districts, Elections In—Qualifications of Electors, Residence, Domicile.

HELD: "Residence," for the purpose of voting at elections in school districts, is governed by Sections 1002 and 574 R. C. M. 1935.

In determining residence for purpose of school elections, the terms, "residence," and "domicile," mean the same thing.

March 22, 1937.

Mr. Eugene L. Murphy
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Dear Mr. Murphy:

You request this office for an opinion respecting the qualifications of voters at school elections. This puts the question very briefly, and in reply to which we have the following to offer.

The Constitution of the State of Montana, Article IX, Section 2, makes the general provision in respect to suffrage, as follows:

" * * * First, he shall be a citizen of the United States; second, he shall have resided in this state one year immediately preceding the election at which he offers to vote, and in the town, county or precinct such time as may be prescribed by law."

Section 1002 R. C. M. 1935 provides that the citizen eligible to vote and qualifying with the constitutional requirements, must have resided in the school district next preceding the election, for thirty days, in order to vote thereat. The question seems to be wholly upon the matter of residence in that the word "residing" is so conspicuously used. 54 C. J. p. 704 reads as follows:

"When used in statutes, or actions, or suits relating to taxation, right of suffrage, divorce, and the like (resid-

ing') is used in the sense of 'legal residence'; that is to say the place of domicile or permanent abode; as distinguished from temporary residence."

This naturally brings into consideration another mooted question as to what is and what is not "domicile," and are the expressions "residence" and "domicile" synonymous? Section 33 R. C. M. 1935 gives us our rules for determining residence, and is quoted as follows:

"Every person has, in law, a residence. In determining the place of residence the following rules are to be observed:

1. It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he returns in seasons of repose.

2. There can only be one residence.

3. A residence cannot be lost until another is gained.

4. The residence of the father during his life, and after his death the residence of the mother, while she remains unmarried, is the residence of the unmarried minor children.

5. The residence of the husband is presumptively the residence of the wife.

6. The residence of an unmarried minor who has a parent living cannot be changed by either his own act or that of his guardian.

7. The residence can be changed only by the union of act and intent."

This section seems to have been modified, concurred in and further explained by Section 574 R. C. M. 1935, as follows:

"For the purpose of registration or voting, the place of residence of any person must be governed by the following rules as far as they are applicable:

"1. That place must be considered and held to be the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning. * * *

"4. A person must not be considered to have lost his residence who

leaves his home to go into another state, or other district of this state, for temporary purposes merely with the intention of returning, provided he has not exercised the right of the election franchise in said state or district. * * *

"8. The place where a man's family resides is presumed his place of residence, but any man who takes up or continues his abode with the intention of remaining, or a place other than where his family resides, must be regarded as a resident of the place where he so abides.

"9. 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."

There seems to be an object in requiring a voter to have resided for a time at a place where he offers to vote. The purpose seems to have been that by residence he is afforded an opportunity to acquire the information necessary for an intelligent vote. He has an opportunity to become identified with the interests of the locality and one of the prime features is that this qualification of residence prevents colonization of voters. In a strict and legal sense a person's domicile or permanent residence may be defined as his true, fixed, permanent home and principal establishment, and to which, whenever he is absent, he has the intention to return. Two things then must concur to make a man a resident and to also make the place his domicile, namely, actual residence and an intention to make the place his home, and if such intent exists, the residence may be long or it may be short, according to the circumstances.

In regard to the question of citizenship, every person must have a permanent residence or domicile, and for these purposes, they can have but one domicile.

Gilman v. Gilman, (Me.) 83 Am. Dec. 502;

Abington v. North Bridge Water, 23 Pick. 170;

Thorndike v. Boston, 1 Met. 242.

If a married man has two places of residence at different times of the year,

that is deemed to be his domicile which he selects or describes or deems to be his home, or which appears to be the center of his affairs, or where he votes or exercises the duties of a citizen.

Chariton County v. Moberly, 59 Mo. 238;

Hairston v. Hairston, 27 Miss. 704.

Domicile may be changed from one state to another, if the removal be bona fide, and with the intention to abandon his residence and to fix it permanently in the state to which he removes.

Read v. Bertrand, 4 Wash. C. C. 514.

It is a rule of universal application, that for all purposes a person must have a residence or domicile somewhere; that he can have but one; and that the residence or domicile of origin, or the one acquired, continues until another is acquired elsewhere. The intention of a party to make the place to which he moves, the place of his permanent residence, is to be gathered from his conduct, his declarations and from a variety of other circumstances.

Read v. Bertrand, *supra*;

Chicago Etc. Ry. Co. v. Ohle, 117 U. S. 123.

Whether a man has changed his residence from one state to another so as to have become a citizen of the latter, must depend very largely upon his intention. The mere fact of prolonged absence from one state, and continued residence in another, while attending to business or pleasure, is not in itself enough to constitute a change of citizenship. The fact that a man continues to vote in the state from which he came, tends to show that he is a citizen thereof.

Woolworth v. St. Paul Etc., Ry. Co., 5 McCrary 574.

A very complete discussion of the question of citizenship and residence may be found in the note in *Berry v. Wilcox*, in 48 Am. St. Rep. 711.

Kennan on Residence and Domicile, Section 19, p. 50, reads:

"The word 'reside' in connection with qualifications needed to vote

for school trustee implies legal domicile and not mere physical presence. "It has been held that the word 'reside' means a permanent residence or one's home, as distinguished from a mere temporary stopping place."

In the case of *In re Coppock's Estate*, 72 Mont. 431, the court said on page 436:

"Vattel defines 'domicile' as 'a fixed residence in any place with an intention of always staying there.' Story observes: 'It would be more correct to say that that place is properly the domicile of a person in which his habitation is fixed without any present intention of removing therefrom.' * * * The authorities are all agreed that the two essential elements are residence and the intention to make the place of residence the home."

Our courts are holding that in the matter of school affairs, generally speaking "domicile" and "residence" mean the same thing.

School District Number Seven v. Patterson, 10 Mont. 17;

Lamar v. Micou, 112 U. S. 452;

School Directors v. James, 2 Watts & S. 568; 37 Am. Dec. 525;

Kennedy v. Ryall, 67 N. Y. 379.

Even to the matter of taking census of school children, the rule, as above stated, holds true.

State ex rel. Johnson v. Kassing, 74 Mont. 25.

Referring back to your letter, the question arises as to the right of suffrage of school trustees in a district in which they are not serving as trustees.

Section 985 R. C. M. 1935 reads as follows:

"Any person, male or female, who is a qualified voter at any election under this act, shall be eligible to the office of school trustee in such district."

And Section 1002 provides the qualification of electors; that they should

be citizens of the United States, have resided in the State of Montana for one year, and thirty days in the school district next preceding the election, in order to vote thereat. The certificate of election of a school trustee provides, in the oath of office, among other things, that the said trustee has not knowingly violated any election law of the state, which naturally includes the right of suffrage.

In short then, we would say that your advice as county attorney, to your superintendent of schools, has been correct in every particular. And we would even go further to say that even though they have purchased homes and their children are attending school in Choteau, that as long as the heads of the families are holding political office in another school district, that until they surrender such positions, the voting precinct of the entire family is in the school district in which these respective persons are acting as trustees.