

Opinion No. 38**SCHOOLS AND SCHOOL DISTRICTS; Districts; Transfer of territory, petitions for—SCHOOLS AND SCHOOL DISTRICTS; Residence— Sections 75-1805 and 83-303, Revised Codes of Montana, 1947.**

Held: Persons who own land within territory proposed to be transferred to another school district pursuant to the provisions of Section 75-1805, RCM, 1947, but whose dwelling houses lie outside such territory are not "resident taxpayers" within the meaning of Section 75-1805.

March 21, 1962

Mr. Henry I. Grant, Jr.
Stillwater County Attorney
Columbus, Montana

Dear Mr. Grant:

Pursuant to the provisions of Section 75-1805, RCM, 1947, a petition was presented to your county superintendent of schools asking that certain territory be transferred from one school district to another. The proposed new boundary lines cut the ownership of some of the properties in two, thereby leaving part of the landowner's property in one school district and proposing to place the other portion in another school district.

There are four houses located in the territory sought to be transferred. The resident taxpayers dwelling in these houses all signed the petition. There are seven houses located in the remainder of the school district. The residents of these houses own land in the territory sought to be transferred. However, none of these persons signed the petition in question. You wish to know if the petition contains the signatures of a majority of the resident taxpayers as required by Section 75-1805, RCM, 1947. In pertinent part that section provides that:

"A majority of the resident taxpayers who are registered electors and whose names appear upon the last completed assessment roll for state, county and school district taxes, residing in territory which is a part of any organized school district may present a petition in writing to the county superintendent of schools, asking that such territory be transferred to, or included in, any other organized district to which said territory is contiguous. . ."

The specific legal question thus presented is: Where persons own land within territory proposed to be transferred to another school district pursuant to the provisions of this statute but whose dwelling houses lie outside such territory, are they "resident taxpayers" within the meaning of the statute.

For the reasons following, I hold that they are not and therefore the petition in question is in full compliance with the statute.

Ordinarily, where the statutes refer only to residence, it will be construed to mean domicile. **State ex rel Duckworth v. District Court**, 107 Mont. 97, 80 Pac. 2d 367 (1938). Section 83-303, RCM, 1947, which defines residence, states that there can be only one residence. Domicile is usually fixed in a particular house, in which case it would also be fixed in the city, county, and state which contain the house. RESTATEMENT (SECOND) CONFLICT OF LAWS, § 9(D) (1958). Section 25 of the Restatement of Conflict of Laws provides that:

“Where a person has his home in a dwelling house which is situated upon a dividing line between political divisions of territory, his domicile is within that territorial division in which the preponderant part of his dwelling house is situated. . .”

To the same effect, see **East Montpelier v. City of Barre**, 79 Vt. 542, 66 Atl. 100 (1906); **Gray v. O'Banion**, 23 Cal. App. 468, 138 Pac. 977 (1914); 19 C. J. **Domicile**, § 56 (1920) 28 C.J.S. **Domicile** § 14 (1941). It is necessarily implied from these cases that the place of a person's lodging is perhaps the most important single criterion in determining residence. Our Supreme Court so held in **State ex rel Duckworth v. District Court**, *supra*.

My review of these authorities leads me to conclude that those persons who own land within territory proposed to be transferred to another school district pursuant to the provisions of Section 75-1805, RCM, 1947, but whose dwelling houses lie outside such territory are not “resident taxpayers” within the meaning of Section 75-1805. I so hold.

Very truly yours,

FORREST H. ANDERSON

Attorney General