

DE 78-27 - June 2, 1978

Voter Residency
ss. 97.041, 97.091, 100.111, 166.032, F.S.

To: Honorable J.W. "Bill" Stevens, Board of County Commissioners, Broward County Courthouse, 201 Southeast Sixth Street, Fort Lauderdale, Florida 33301

Prepared by: Division of Elections

By your letter of May 5, 1978, the opinion of this office was requested in answer to substantially the following question:

What is the locational residency requirement for an elector in Florida?

To be eligible to register to vote in this state an individual must satisfy certain constitutional and statutory requirements. The State Constitution provides:

"Every citizen of the United States who is at least twenty-one years of age and who has been a permanent resident for one year in the state and six months in a county, if registered as provided by law, shall be an elector of that county." Fla. Const., Art. VI, s. 2.

The twenty-one year age requirement was lowered to eighteen in all elections by virtue of the Twenty-Sixth Amendment to the U.S. Constitution. (Ratified July 1, 1971). See Oregon v. Mitchell, 400 U.S. 112, 91 S.Ct. 260, 27 L.Ed.2d 272 (1971). The durational residency requirement were invalidated by court decision. Woodsum v. Boyd, 341 F.Supp. 448 (M.D. Fla. 1972); Dunn v. Blumstein, 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972).

The applicable statute relating to qualifications to register to vote is s. 97.041, F.S., which in pertinent part currently reads as follows:

"(1) Any person at least 18 years of age who is a citizen of the United States and a permanent resident of Florida and of the county where he wishes to register is eligible to register with the supervisor when the registration books are open. Upon registration, such person shall be a qualified elector of that county." (e.s.).

This law was amended in 1972 to lower the constitutional age and durational residency requirements to eighteen years and sixty days in the state and county, respectively, ch. 72-197, Laws of Florida. The sixty days was deleted in 1974. ch. 74-5, Laws of Florida. Thus, the only residency requirement for voter registration eligibility is to be a "permanent resident." s. 97.041(1), F.S.

Supplementing the registration provision is a statute relating to residency required of any person in order to vote, which states:

"No person shall be permitted to vote in any election precinct or district other than the one in which he has his permanent place of residence and in which he is registered; provided however, that persons temporarily residing outside of the county shall be registered in the precinct in which the county courthouse is located when they have no permanent address in the county and it is their intention to remain a resident of Florida and of the county in which they are registered to vote." s. 97.091(1), "F.S. (e.s.).

The courts have construed the term resident (or residency) on numerous occasions. An early decision found:

"The generally accepted definition of 'residence,' when the term is used with reference to the qualifications of voters, is synonymous with 'domicile' - that place. . .in which his habitation is fixed, without any present intention of removing therefrom." Berry v. Wilcox, 44 Neb. 82, 62 N.W. 249 (1895), cited in 1970 Op. Atty Gen. Fla. 070-97 (August 3, 1970).

Many courts have found the essential element in determining residency to be the animus manendi, i.e., the intention of remaining. Black's Law Dictionary (4th ed.). The Florida courts have found the phrase "legal resident" to be synonymous with permanent residency, domicile, or permanent abode, as distinguished from temporary residence. Bloomfield v. City of St. Petersburg, 82 So.2d 364 (Fla. 1955); Herron v. Passailaigue, 110 So. 539 (Fla. 1926).

The concept of "residency" or "domicile" is a subjective one to the extent that it invokes the intent of the individual. 1973 Op. Atty Gen. Fla. 073-209 (June 7, 1973). The Supreme Court of Florida has

". . .consistently held that where a good faith intention is coupled with an actual removal evidenced by positive overt acts, then the change of residence is accomplished and becomes effective. This is so because legal residence consists of the concurrence of both fact and intention. The bona fides of the intention is a highly significant factor." Bloomfield, supra, at 368.

The key element is the intent of the individual. Permanent residence is wherever a person mentally intends it to be and which can be factually supported. Such factual support may be voter registration, drivers license, tax receipts, receipt of mail, carrying on of activities normally indicative of home life, etc. See 1963 Op. Atty Gen. Fla. 063-31 (March 20, 1963). The filing of a declaration of domicile with the circuit court clerk is not conclusive and positive proof of residency. See 1970 op.. Atty Gen. Fla. 070-89 (August 3, 1970). All of the foregoing do not prove place of legal or permanent residency, but may be used as evidence of that fact.

Once a person has established residency for voting purposes, the absence thereof for any reason not connected with a change of domicile will not disturb that establishment. 1955 Op. Atty Gen. Fla. 055-216 (August 26, 1955). Temporary absence from the place of residency may occur, and is even accounted for by statutes, s. 97.081(1), F.S. It has previously been found that where an elector is for some reason temporarily absent from his legal residence he has not necessarily changed legal

residence, so long as it is his intention to retain his residence and return to that locale. 1953-54 Op. Att'y Gen. Fla. 75. An elector's mailing address may even be in one county without destroying his legal residency in another county. Id.

By virtue of being a registered voter in a county in this state, a person may also vote in elections regarding state, district, and federal office. A person eligible to vote in such elections is also eligible to vote in municipal elections if he resides within the corporate limits of the municipality. 1971 Op. Att'y Gen. Fla. 071-202A (August 13, 1971). See s. 166.032, F.S.

Accordingly, based on the foregoing discussion, the residency of voters is where he or she maintains a domicile with a corresponding intent that such is at that point in time his or her sole permanent residence.

It should be noted that any person's right to vote may be challenged at the polling place by any other elector (including election officials) or watchers, s. 100.111, F.S. This may be done whenever any doubt or question arises as to the challenged voter's qualifications to vote. This may include questions as to whether or not the person has maintained legal residency within the appropriate jurisdiction.

The election officials at the polling place may attempt to resolve the matter immediately by taking such appropriate action as satisfies the election clerk of that precinct and majority of the election inspectors that the person is qualified to vote. s. 101.111(3), F.S. As previously noted, residency is a voter qualification requirement in federal, state, county, and municipal elections in Florida. In the event of a question as to residency, evidence of such may be requested. Various items as discussed above may be utilized to indicate one's intent to maintain residency.

SUMMARY

A person's residency for voting purposes is where he or she intends to maintain permanent domicile at that time to the exclusion of any other location. Failure to have maintained residency in that jurisdiction may be grounds to challenge the elector at the polling place.