

One or more statutes addressed in this opinion has changed.

Please consult current Florida law.

DE 88-34 - August 16, 1988

**Change of Residency
Sections 97.041, 97.091, and 98.201, F.S.**

To: Honorable Lois M. Ritter, Supervisor of Elections, Jefferson County, Post Office Box 158, Monticello, Florida 32344

Prepared by: Division of Elections

This is in reference to your request for an advisory opinion. Under Section 106.23(2), Florida Statutes, the Division of Elections has authority to issue advisory opinions relating to the Florida Election Code, Sections 97-106, Florida Statutes, to several categories of persons including supervisors of elections.

Your specific question is:

May a supervisor of elections remove an elector from the rolls when the elector has moved his residence to a neighboring county? This elector insists on voting in his former county because he maintains a business there and has plans of moving back.

Since we answer this question in the affirmative, it is unnecessary for us to consider your second question concerning this elector's precinct assignment.

Section 97.041(1)(a), Florida Statutes, establishes the requirements for voter registration in Florida. One of the requirements for voter registration is permanent residency in the county where the individual wishes to register. It appears from the facts which you describe in your letter that the elector is no longer a permanent resident of Jefferson County. Simply owning a farm and a business in Jefferson County do not make an individual meet the permanent residency requirements required by the Election Code. In this situation, the voter has purchased a mobile home and placed it one-fourth mile across the Jefferson County line in Madison County. Thus, because of his own actions, the elector lacks an essential requirement of Section 97.041(1)(a), Florida Statutes, permanent residency in Jefferson County.

This is not a case where the voter is temporarily residing outside Jefferson County. Section 97.091(1), Florida Statutes, provides for voter registration in a certain precinct when an elector is temporarily residing out of the precinct, does not apply here because the voter's move is permanent and his intent to return to Jefferson County is speculative. Case law discussing this question is scarce. However, in Felker v. Henderson, 78 N.H. 509, 102 A 623 (N.H. 1917) the court held that one who married and established a home in another jurisdiction could not retain his former residence by a mere intent to return to it if certain events occurred. As in Felker, the facts of this case indicate that the voter has moved his permanent place of residence to Madison County and plans to stay there for an indefinite time. His speculative return to Jefferson County is not enough to satisfy the requirements in Section

97.041(1)(a), Florida Statutes.

Under the procedures outlined in Section 98.201(1), Florida Statutes, the voter may be removed from the rolls of Jefferson County since he is no longer a permanent resident.

SUMMARY

Notwithstanding a voter's indefinite intent to return to his former residence and the location of his farm and business in the county of his former residence, such a voter may be removed from the rolls pursuant to the procedures outlined in Section 98.201(1), Florida Statutes, when he moves his permanent residency to a neighboring county.