

DE 93-05 - June 23, 1993

Residency
§§ 97.041(2), 97.051 and 97.091(1), F.S.

TO: The Honorable David C. Leahy, Supervisor of Elections, Dade County, 111 Northwest First Street, Suite 1910, Miami, Florida 33128-1962

Prepared by: Division of Elections

This is in response to your request for an advisory opinion regarding legal residency of an individual who asked to be registered as a voter in Dade County. The Division of Elections has authority pursuant to Section 106.23(2), Florida Statutes, to issue advisory opinions relating to the Florida Election Code, Chapters 97-106, Florida Statutes, to several categories of persons, including supervisors of elections.

According to your letter and subsequent conversations with this office, an individual has moved his personal belongings from Broward County to Dade County and is now living with his mother in Dade County. This person is engaged in divorce proceedings and his spouse remains in the marital home in Broward County. He has stated his intent to permanently remain at the residence to which he has moved in Dade County and has asked to register to vote in Dade County. Based on the foregoing, you ask whether, pursuant to Section 97.091(1), Florida Statutes, the individual is a legal resident of Dade County or Broward County.

It is the opinion of the Division that, for the purpose of registering to vote, an individual has established legal residency in a county when he physically moves to the county with the intent of making that county his permanent home.

Section 97.091(1), Florida Statutes, is inapplicable to the above-described factual scenario. That section applies only where a person temporarily moves outside his county of legal residence and remains a voter in the county of his legal residence. Here, the person has moved permanently and asked to register to vote in the county in which he has established his new legal residence. Under these circumstances, the person would need to reregister as a voter in accordance with Sections 97.041 and 97.051, Florida Statutes.

No provision of the Florida Election Code defines legal residency. However, this office and Florida courts have consistently construed legal residence to mean a permanent residence, domicile, or permanent abode, rather than a residence that is temporary. See, Op. Div. Elect. Fla. 80-27 (August 27, 1980); Walker v. Harris, 398 So. 2d 955 (Fla. 4th DCA 1981); and Cruickshank v. Cruickshank, 420 So. 2d 914 (Fla. 1st DCA 1982).

In Bloomfield v. City of St. Petersburg Beach, 82 So. 2d 364 (Fla. 1955), the Florida Supreme Court stated:

[W]here 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.

Legal residence is, therefore, determined by looking to where a person intends to make a home permanent and to whether factual evidence exists to corroborate that intent.

In making this determination, no single piece of evidence, such as homestead exemption, is decisive. As directed in Ogden v. Ogden, 33 So. 2d 870, 873 (1947), "the best proof of one's domicile [legal residence] is where he says it is."

This is not to say, however, that proof of legal residence simply depends on a person's subjective intent. Instead, the establishment of legal residence depends on a variety of acts or declarations, all of which must be considered and weighed on a case-by-case basis. Examples of evidence which may be considered in determining whether legal residency has been established include driver's license, tax receipts, mail receipts, bank accounts, the relocation of personal effects, and the purchase or rental of property.

SUMMARY

An individual has established legal residency for voter registration purposes in a county when he physically moves to the county with the intent of making that county his permanent home.