

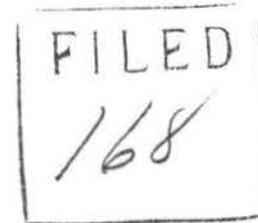
RESIDENCE:  
KANSAS CITY AREA:  
TRANSPORTATION DISTRICT:  
AUTHORITY:

Residence requirements for a commissioner of the Kansas City Area Transportation District Authority as the representative of a particular county are met by a person who is legally

entitled to vote in such county. Voting residence depends on the intent of an individual and such intent is determined by his acts as well as his statements.

OPINION NO. 168

August 7, 1969



Honorable Carl D. Gum  
Prosecuting Attorney  
Cass County Court House  
Harrisonville, Missouri 64701

Dear Mr. Gum:

This is in response to your request for an opinion from this office. The first question is as follows:

1. Is voting residence in a county sufficient to meet the residence requirements in Chapter 238, RSMo Cum. Supp. 1967, for a commissioner?

Chapter 238, RSMo Cum. Supp. 1967, provides for the establishment of the Kansas City Area Transportation District Authority pursuant to an inter-state compact between the states of Missouri and Kansas. The commissioners who make up the authority are charged with the planning and development of transportation facilities in an area which includes the Missouri counties of Cass, Clay, Jackson and Platte, and the Kansas counties of Johnson, Leavenworth and Wyandotte. Under Article V of the compact:

"The Authority shall consist of ten Commissioners, five of whom shall be resident voters of the state of Missouri and five of whom shall be resident voters of the state of Kansas. All Commissioners shall reside within the District, the Missouri members to be chosen by the State of Missouri and the Kansas members by the State of Kansas, in the manner and for the terms fixed by the Legislature of each State except as herein provided."

The appointment of the Missouri commissioners is controlled by Section 238.060, RSMo Cum. Supp. 1967, subsection 1, paragraphs (1) and (2):

Honorable Carl D. Gum

"(1) There shall be five commissioners appointed from within the district established by the compact and at least three of said commissioners shall reside with the city of Kansas City, Missouri;

(2) Within thirty days after October 13, 1965, by majority vote of each county court from Cass, Clay, Jackson, and Platte counties there shall be submitted to the governor a panel of three qualified persons who reside in their respective counties and on each panel from Clay, Jackson and Platte counties at least one person shall reside within the city of Kansas City. The mayor of Kansas City, Missouri, with the approval of a majority of the members of the city council of the city of Kansas City shall submit to the governor a panel of three qualified persons who reside within the city of Kansas City. the governor within thirty days thereafter shall appoint with the advice and consent of the senate one commissioner from each panel so submitted; \* \* \*"

Section 238.070 provides:

"All commissioners so appointed shall be qualified voters of the state of Missouri and shall reside within the district established by the compact and within the county or city from which appointed. No commissioner shall have a direct or indirect financial interest in any property acquired by the Kansas City area transportation authority."

Thus, the commissioner must be a "voting resident" of Missouri and he must "reside" in the county from which he is chosen. In the case of Platte, Jackson and Clay counties, at least two of the three commissioners must reside also in Kansas City.

While "voting residence" has not been defined in the statute, the sufficiency of residence for the purpose of voting has been the subject of judicial decision. Domicile is sufficient in Missouri to allow a person to vote in the state even though he may set up a temporary residence elsewhere. Lankford v. Gebhart, 130 Mo. 621 (1895). In general, however, rules with regard to "voting residence", whether in the state or in a subdivision of the state, generally assure that the voter has a sufficient connection with the place where he votes to be concerned and informed.

Honorable Carl D. Gum

Hence, residence sufficient under the laws of Missouri to vote should assure a sufficient connection between a person and a community to allow the former to provide minimally informed and concerned participation by him in its affairs, and representation of its interests by him in a legislative or administrative agency.

The apparent purpose of the legislature in requiring that a commissioner "reside" in the county from which he is chosen is to provide for the most effective representation of the interests of the political units involved in the transportation district. The preference for residence in Kansas City on the part of at least three and possibly four commissioners merely reflects the probability that Kansas City will be most affected by the operations of the Authority. This in no way detracts from the purpose of giving all of the four counties adequate representation. If the residence of the commissioner is a mere technicality, reflecting only a tenuous connection with the county he represents, the purpose of the statutory requirement of "residence" is defeated. "Voting residence" would seem to satisfy the requirements of Section 238.070.

The second question of the opinion request is as follows:

2. If your answer to the preceding question is negative, is a voting residence alone sufficient to allow a person who has been appointed a commissioner to maintain the office or, if the person so appointed moves out of the county from which he was appointed, must such office be declared vacant?

We are unable to give an opinion on whether the commissioner in question is a legal resident voter in Cass County because that depends upon many factors that have not been determined or made known to us at this time.

Section 1.020, RSMo, provides rules for construing certain words used in the statutes and provides:

"9. 'Place of residence' means the place where the family of any person permanently resides in this state, and the place where any person having no family generally lodges;"

In Barrett v. Parks, 180 S.W.2d 665, the court held that the words "permanently reside" as used in the above statute are not used in the sense that "residence" may never be changed but that there exists no present intention to change it. It further held that one may not reside in more than one place for the purpose of voting and that conduct is an important factor in determining intention since actions speak louder than words and if there is a discrepancy between declarations of intention and acts, the declarations yield to the conclusion to be drawn from the acts.

Honorable Carl D. Gum

In State v. Mueller, 388 S.W.2d 53, the issue before the court was whether a person elected alderman from the 21st ward in the city of St. Louis was a resident of such ward at the time he was elected. He contended his legal residence was 3801 A Lee Street in the 21st ward, where he and his wife were registered to vote and where he had a furnished apartment above a drug store owned and operated by his brothers. Some time prior to the election, he bought a home located at 1632 Veronica Avenue in the 1st ward where he and his family lived and where he usually goes after work to eat and sleep. The court in discussing the question of intent stated that a person cannot live in one place and by force of imagination constitute some other place his place of abode; the actual residence controls and no formula which ignores the householder's good faith or lack of it, or the purpose for which his claim of domicile is made, or which facilitates the concealment of those factors, will satisfy the demands of the law. The court held that although residence is largely a matter of intention, it is not entirely a matter of intention and that intention when considered by itself separate and apart from evidence of some act or acts in conformity with such intention is never sufficient to establish the ultimate fact of residence. Then too, a person's testimony as to his intention is simply a statement designed to create evidence of it. As it must be accepted on faith, it should be received with caution; and when in conflict with the other evidence on the subject, ought always to be subordinated to it. Thus, the rule has evolved that where the behavior of the householder is at odds with his professed intent, the former will control - for actions speak louder than words.

The court held in the above case that Mueller was not a resident of the 21st ward and his voter registration from that address was improper; that since the residence requirement with respect to any public office is mandatory, the judgment of ouster by the trial court was proper.

The mere fact that this person may vote or be registered for voting in Cass County does not of itself establish legal voting residence in Cass County. It is also possible that he may vote in Cass County although legally speaking he may not be entitled to vote in that county - State v. Mueller, supra.

The fact that the statute under consideration does not expressly provide that a change of residence forfeits the office is not important. In State ex rel v. Donworth, 127 Mo. App. 377, the court held that when an alderman moved out of his ward he forfeited his office although the statute was silent about a forfeiture.

As heretofore stated, no definite opinion can be issued by this office as to whether the commissioner in question is, or is not, eligible for the office of commissioner of the Kansas City Transit Authority. This statement that he considers Cass County as his residence, and that he intends to vote in Cass County may, or may not, support his contention as to his legal residence

Honorable Carl D. Gum

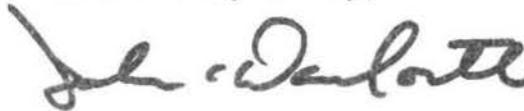
depending upon other factors that must be considered. Consideration should be given as to where his personal property is assessed, whether he owns or sold his home in Cass County, whether he still maintains a place to eat and sleep in Cass County, whether his employment in Kansas City is for a definite period of time or merely temporary, whether he has purchased property in Kansas City and any other elements that should be considered in determining the legal residence.

CONCLUSION

It is the opinion of this office that the residence requirements for a commissioner of the Kansas City Area Transportation District Authority as the representative of a particular county are met by a person who is legally entitled to vote in such county. Voting residence depends on the intent of an individual and such intent is determined by his acts as well as his statements.

The foregoing opinion, which I hereby approve, has been prepared by my assistant Moody Mansur.

Yours very truly,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH  
Attorney General