

ELECTIONS: Party living in county for number of years, leaving for purpose of teaching school, but who has always voted in said county and claimed same as his residence, is eligible to become candidate for County Sup't. of Schools.

11-5
October 25, 1934.

Mr. A. Loyd Collins,
Sup't. of Schools,
McFall, Missouri.



Dear Sir:

This department is in receipt of your letter of September 13, 1934 wherein you make the following inquiry:

"I claim Henry County, Clinton, Missouri as my legal residence; but as I am engaged in the school profession, my family and I, of course, live where I am teaching for the nine months school term each year. In state and county election, when I am away, I send in my absentee vote.

I am superintendent of schools at McFall, Missouri, in Gentry County for the school term of 1934-35. In the spring I am contemplating making announcement as a candidate for the office of county superintendent of schools of Henry County, Missouri. I am writing you to ascertain if I am eligible to announce for the office. I shall appreciate an opinion from you relative to the matter at your earliest convenience."

Section 9454, R.S. Mo. 1929 relates to the election and qualification of a county school superintendent and is in part as follows:

"There is hereby created the office of county superintendent of public schools in each and every county in the state; the qualified voters of the county shall elect said county superintendent at the annual district school

meeting held on the first Tuesday in April, 1923, and every four years thereafter; said county school superintendent shall be at least twenty-four years old, a citizen of the county, shall have taught or supervised schools as his chief work during at least two years of the eight years next preceding his election or appointment; * * * * "

Whether or not you are a citizen of Henry County is largely a matter of intention on your part, corroborated by your past actions relative to voting and claiming the same as your legal residence.

In the case of Hall v. Schoenecke, 128 Mo., l.c. 666, the court in discussing the status of a student, said:

"The evidence discloses the facts that two of the young men whose votes were rejected had formerly lived in the state of Kansas and came to Tarkio for the purpose of attending college. They were still students in college at the date of the election. Their parents, by whom they were supported and their tuition was paid, continued to reside in Kansas. One of them testified that he regarded Tarkio as his home, and expected to reside there after his education was finished. The facts in the case of the other voter were substantially the same, except that his parents resided in Missouri, though not in the City of Tarkio.

The constitution of the state provides that 'no person shall be deemed to have gained a residence by reason of his presence, or lost it by reason of his absence **** while a student in any institution of learning'. This provision is but a declaration of the law as generally recognized. McCrary on Elections (3 Ed.), secs. 66-68; 6 Am. & Eng. Enc. of Law, 278.

Each case must, then, depend upon the facts. There is no doubt that a student may become a resident of the place where the college is located, though he only went there for the purpose of attending school. Whether he has done so or not,

depends upon all the facts and circumstances. The fact that he is supported and maintained by his parents, and spends his vacation with them, are strong, but not necessarily conclusive, circumstances to prove that he has not changed his residence. See cases cited in note 6 Am. & Eng. Encyclopedia of Law, p. 278. The question is, as in other cases, largely one of intention, though as to this, the evidence of the party himself is not necessarily conclusive.

The question in this case was one of fact for the court. There were no declarations of law asked or given, and we can not review the finding of the court, in law cases, upon questions of fact, when there is substantial evidence to support such finding."

It was also said by the court in the above decision that

"A temporary removal by a person, for the sole purpose of educating his children, without an intention of abandoning his usual residence, and with the intention of returning thereto when his purpose has been accomplished, will not constitute such a change of residence as would, under the law, entitle him to vote at his temporary abode."

Likewise, in the case of Hope v. Flentge, 140 Mo., 1.c. 398-399, the court said:

"The challenges of E.W. Nelson and A.N. Payne were based upon the want of legal residence in the county. These parties testified to a residence of more than twelve months in the State and more than sixty days in the county and that they had their home in the county. It was a question of fact in which the intention of the parties largely entered and the circuit court found they were residents within the meaning of the law and that finding we will not disturb. Lankford v. Gebhart, 130 Mo. 621; Hall v. Schoenecke, 128 Mo. 661."

CONCLUSION

It is the opinion of this department that if Henry County was your legal residence for a number of years but that you left the county for the purpose of engaging in your profession of teaching school, have always voted in Henry County and have claimed the same as your residence, you would be eligible to become a candidate for the office of County Superintendent of Schools of Henry County.

Respectfully submitted,

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APPROVED:

ROY McKITTRICK,
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