

POLL TAX: Governed by domicile of person.

6-10

May 23, 1935.



Hon. William Barton,  
House of Representatives,  
58th General Assembly,  
Jefferson City, Missouri.

Dear Sir:

We wish to acknowledge your letter of May 20th,  
wherein you state as follows:

"Does a person over twenty-one years  
and under sixty years who works in a  
county where a poll tax is demanded  
and who votes out of the county and  
has his laundry done outside of that  
county, have to pay a poll tax in the  
county in which he works when demanded?"

"Section 7879, R. S. Mo. 1929, seems  
to be the section dealing with this  
question."

Section 7879, R. S. Mo. 1929, provides as  
follows:

"In all counties in this state in which  
the county court shall levy a poll tax  
it shall be the duty of each road over-  
seer during the month of February each  
year to prepare a list, alphabetically  
arranged, of all able-bodied male in-  
habitants in his district over the age of  
twenty-one and under the age of sixty years,  
also a list of all other able-bodied male  
citizens over the age of twenty-one resid-  
ing in his district, and he shall file  
said lists with the county clerk of his

county on or before the first day of March following. On or before the 15th day of April of each year the clerk of the county court shall copy the list of names furnished him by the road overseer of the several road districts, alphabetically arranged, on a separate tax book, to be known as the poll tax book, and shall extend opposite each name the poll tax as levied by the county court, and he shall furnish each overseer with a copy of the poll tax book for his district. All persons, corporations and copartners are hereby required, on application of the road overseer, of his, her, its or their district to furnish to said overseer the names of all persons in his, her, its or their employ who are liable to the payment of all poll tax under the provisions of this article, and for a willful refusal, failure or neglect to do so within ten days after such demand, in writing, they shall forfeit and pay to the county, for the benefit of the county school fund, the sum of one hundred dollars, to be recovered by suit brought by the overseer in the name of the road district, as in other civil actions."

Cooley on Taxation, Vol. 4, page 3505, provides as follows:

"The domicile of the person taxed governs the place where poll taxes may be imposed."

In the case of *In re Ozias' Estate*, 29 S. W. (2d) 240, 1. c. 243, our court said:

"The ruling herein depends upon the proper construction of the word domicile. Our Supreme Court held in *Re Estate of Lankford*, 272 Mo. 1, 197 S. W. 147, that residence is largely a matter of intention, to be deduced from the acts of a person. Residence and domicile are used inter-

changeably, and, in so far as they apply to the situation here presented are synonymous.

"Domicil. That place where a man has his true, fixed and permanent home and principal establishment, and to which whenever he is absent he has the intention of returning.'

"Bouv. Law Dict., Vol. 1, page 915. Proof of domicile, or legal residence, does not depend upon any particular fact, but upon whether all the facts and circumstances taken together tend to establish the fact. Engaging in business and voting at a particular place are evidence of domicile there, though not conclusive. Hayes v. Hayes, 74 Ill. 312; Inhabitants of East Livermore v. Inhabitants of Farmington, 74 Me. 154. To constitute a change of domicile three things are essential: (1) Residence in another place; (2) an intention to abandon the old domicile, and (3) an intention of acquiring a new one. Berry v. Wilcox, 44 Neb. 82, 62 N. W. 249, 48 Am. St. Rep. 706. It has been held a wife's removal into another state for the benefit of her husband's health and a residence there for twelve years will not change the original domicile. In re Reed's Will, 48 Or. 500, 87 P. 763; Ensor v. Graff, 43 Md. 291.

"A person can have but one domicile, which, when once established, continues until he renounces it and takes up another in its stead. It is not lost by temporary absence. The question is one of fact which is often difficult to determine. Words and Phrases, Second Series, Vol. 2, page 133; City of Lebanon v. Biggers, 117 Ky. 430, 78 S. W. 213, 214."

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A person's domicile is largely a matter of intention, to be deduced from the acts of the person. In the instant case we are presented with the following facts that might indicate that his domicile is not in the county where he works: (1) He votes outside of the county, and (2) he has his laundry done outside of the county. Our courts have held that voting at a particular place is evidence of a domicile there, though not conclusive, and we are of the opinion that the same reasoning would apply in the case of laundry done outside the county. If a person has a true, fixed and permanent home and principal establishment in one county, he does not lose it by engaging in business in another county. To constitute a change of domicile, there must be residence in another place, an intention to abandon the old domicile, and an intention of acquiring a new one. A person can have but one domicile, and it is not lost by temporary absence. Proof of domicile or legal residence is not dependent upon any particular fact, but upon whether all the facts and circumstances taken together tend to establish the fact. We have not been presented with enough facts to determine where this person has his domicile. Voting and having laundry done outside the county, as we have previously said, is evidence, but not conclusive.

A person's domicile may be determined by aid of the rules hereinabove set out, and if it is found that his domicile is outside the county in which he works, we are of the opinion that a poll tax can not be imposed on him by the county where he works.

Yours very truly,

James L. HornBostel  
Assistant Attorney General

APPROVED:

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ROY MCKITTRICK,  
Attorney-General.

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