

SCHOOLS:
ELECTION:

- (1) No provision in election laws for a challenger for school election.
- (2) Elector entitled to vote at annual school election even though he has moved to another state and back again to his original residence.

March 27, 1940



Honorable L. Cunningham, Jr.
Prosecuting Attorney
Camden County
Camdenton, Missouri

Dear Sir:

This Department is in receipt of your letter of March 21st, wherein you request the opinion of this office on certain matters. Your first question is as follows:

I.

"The school board has selected the judges of election pursuant to Section 9341 and these citizens desire to have a challenger present in the voting place and would appreciate your opinion as to their right to have a challenger."

Referring to Section 9341, R. S. Mo. 1929, mentioned in your letter, the contents of which you appear to be familiar with, we note that it contains the clause,

"the election otherwise conducted in the same manner as the elections for state and county officers and the result thereof certified by the judges and clerks to the secretary of the board of education,"

March 27, 1940

The statutes provide for challengers and witnesses in certain instances under Section 10270, R. S. Mo. 1929, which is as follows:

"The county, ward or township committeeman of each party in each county, or the ward committeeman in any city with a population of over 300,000, may appoint two party agents or representatives, with alternates for each, who may represent his party at the polling place in each precinct during the casting, canvass and return of the vote at a primary, who shall act as challengers and witnesses to the count of the vote for their respective parties, and have the power prescribed by law."

Bearing in mind that the election is to be conducted in the same manner as state and county officers are elected, yet we cannot construe the terms of Section 10270, supra, as broad enough to cover annual school elections. We are therefore of the opinion that there is no provision in the election laws for having a person acting as a challenger for the coming school election on April 2d.

II.

Your second question is as follows:

"Citizens of another school district of this county have requested that I obtain your opinion as to the right as to the following individual to vote at the annual school election. The individual a year ago moved his family and belongings, except a small

March 27, 1940

part of his household goods, from his farm in Camden County to the State of Kansas where he operated a filling station, however, he did not sell his farm nor did he rent it to any other person and he kept a part of his household goods in the house upon the place. About the 1st of January, his filling station and property burned in Kansas and he moved back to this county and the place he had left. While I realize that the matter of residence is largely a matter of intention, it seems to me that the facts indicate that he has changed his residence and, of course, upon his moving back he has not been a resident long enough to be a qualified voter at the election and I feel that the judges of election would be justified perhaps in refusing him a ballot, however, I would appreciate your opinion upon the matter."

The latest expression of the courts with reference to residence for the purpose of voting is contained in the decision of Chomeau v. Roth, 230 Mo. App. 709, 72 S. W. (2d) 997. The general rule is aptly expressed on page 718, as follows:

"The fact that the challenged voters were students is in and of itself not at all decisive of the case. Our Missouri Constitution provides in article 8, section 7 (Const., art. 8, sec. 7, p. 677), that for the purpose of voting, no person shall be deemed to have gained a residence by reason of his presence, or to have lost it by reason of his absence,

while a student of any institution of learning. So the Constitution leaves the student much as it finds him, permitting him either to retain his original residence for voting purposes, or to take up a residence wherever his school is located if he so elects. In other words, mere physical presence at the school is not enough either to gain for him a voting residence at the school, or to cause him to lose his existing voting residence at his home, the whole question, as in all similar situations, being largely one of intention, to be determined not alone from the evidence of the party himself, but in the light of all the facts and circumstances of the case. (Hall v. Schoenecke, 128 Mo. 661, 31 S. W. 97; Goven v. Murrell, 195 Mo. App. 104, 190 S. W. 986.)

"The two cited cases, and particularly the former, control this case in all essential respects. As they announce the law, it is entirely possible for a student to gain a residence at the place where he is attending school, although he may have gone there for no other purpose than to attend school, the question of whether a change of residence is effected depending upon the intention with which the removal from the former residence was made. A temporary removal for the sole purpose of attending school, without any intention of abandoning his usual residence, and with the fixed intention of returning thereto when his purpose has been accomplished, will not constitute such a change of

March 27, 1940

residence as to entitle the student to vote at his temporary abode. But conversely, an actual residence, coupled with the intention to remain either permanently or for an indefinite time, without any fixed or certain purpose to return to the former place of abode, is sufficient to work a change of domicile. (Nolker v. Nolker (Mo. Sup.), 257 S. W. 798; Finley v. Finley (Mo. App.), 6 S. W. (2d) 1006.)"

In the decision of Lankford v. Gebhart, 130 Mo. 621, which appears to be more on a parallel with the facts which you present, it was held that a person who moved to another state to remain there if he was successful in securing a homestead and to return if he was not, did not lose his residence as a voter though he staked and worked a claim but shortly afterwards abandoned it before filing his claim and he and his family lived in another state for several months before returning to Missouri.

Applying the rule as contained in the Chomeau v. Roth case, quoted supra, the elector's intention can only be gleaned by his own statements, and assuming that he will state that he intends his residence to be in the district in question, then are his acts and actions consistent therewith? You state that he left part of his household goods. It may be that he intended to remain in Kansas only in the event that the filling station was successful.

Under the facts which you present, we are of the opinion that the elector in question is entitled to vote at the annual school election.

Yours very truly,

OLLIVER W. NOLEN
Assistant Attorney-General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney-General