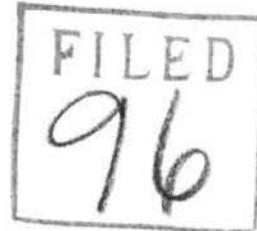


COPY

TOWNSHIP ASSESSOR: Residence is dependent upon intention and
RESIDENCE: when established is not changed by temporary
change of place of abode if no intention to
change residence is entertained.

May 19, 1953



Hon. James J. Wheeler
Prosecuting Attorney
Chariton County
Keytesville, Missouri

Dear Mr. Wheeler:

We have your recent letter in which you request an opinion of this department. Your letter is as follows:

"One Earl McSparren has been township assessor in Cockrell Township in Chariton County for some sixteen years. Chariton County is under township organization. McSparren owns 450 acres, all in Cockrell Township. Recently, McSparren moved to the town of Salisbury for the purpose of providing his children a more convenient access to school. He still owns his land in Cockrell Township which he works himself, and he has reserved a room on the farm which he will occupy during the busy season.

"Mr. McSparren wishes to run for the Office of Township Assessor in Cockrell Township again. We are wondering if he has sufficient residence to qualify for township office under Section 65.150, Revised Statutes of Missouri 1949. This section provides 'no person shall be eligible to any township office unless he shall be a qualified voter of such township'.

"We will appreciate it very much if you will advise."

Section 65.150 RSMo 1949 pertaining to qualifications for township office is as follows:

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"No person shall be eligible to any township office unless he shall be a qualified voter and a resident of such township."

Article VIII, Section 2 of the Constitution of Missouri, provides in part as follows:

"All citizens of the United States * * * * over the age of twenty-one who have resided in this state one year, and in the county, city or town sixty days next preceding the election at which they offer to vote, and no other person, shall be entitled to vote at all elections by the people; * * * * * ."

Section 111.060 RSMo 1949 provides in part as follows:

"All citizens of the United States, * * * * over the age of twenty-one years who have resided in this state one year, and the county, city or town sixty days immediately preceding the election at which they offer to vote, and no other person shall be entitled to vote at all elections by the people. Each voter shall vote only in the township in which he resides, or if in a town or city, then in the election district therein in which he resides. * * * * *"

It is obvious from an examination of the above quoted Section 15.150 RSMo 1949 that in order to be a township office holder it is necessary for the aspirant to be a qualified voter of the township and it is obvious from the above quoted constitutional and statutory provisions that in order to be a qualified voter in the township the aspirant must be a resident of the township.

The question to be decided therefore is whether or not under the circumstances set forth in your aforesaid letter McSparren is a resident of Cockrell Township.

You state in your letter that McSparren recently moved to

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Salisbury for the purpose of providing more convenient access to schools for the purpose of educating his children. Your letter also discloses that he has reserved a room in his farm house where he intends to live during the busy season on the farm. The fact that Mr. McSparren aspires to the office of Township Assessor of Cockrell Township tends to indicate to us that he claims to be a resident of said township.

A man's residence is established by his intention as to where he shall reside. This does not mean that a declared intention prevails over an intention that can be inferred from his course of conduct.

We are of the opinion that when a man's residence has been established in a given locality as Mr. McSparren's has been in Cockrell Township by his having lived in said township with his family his residence is not changed to another locality merely by reason of his moving into town for the purpose of educating his children particularly when he retains a room in his old home and occupies it for a portion of the time and continues to farm the land.

In this connection we quote as follows from the opinion of the court in the case of Hall v. Schoenecke, 31 SW 197, 128 Mo. 661, 1. c. 667:

"A temporary absence of a person from his usual residence, through a series of years, does not necessarily cause a loss of such residence. Whether a change was effected in any case depends upon the intention with which the removal from the former residence was made. McCrary on Elections [3 Ed.], sec. 62

"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."

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CONCLUSION

We are accordingly of the opinion that the fact that Mr. McSparren has moved his family into town for the purpose of giving his children more convenient access to school does not necessarily indicate an intention on his part to change his residence.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Samuel M. Watson.

Yours very truly

JOHN M. DALTON
ATTORNEY GENERAL

SMW:A