

POLICE:  
KANSAS CITY POLICE:  
RESIDENCE:  
QUALIFICATIONS FOR OFFICE:  
OFFICERS:

Police commissioners or policemen of the City of Kansas City must reside within the city and residence within an area which the voters have voted to annex but which annexation has not become effective will not satisfy this requirement.



December 27, 1954

Honorable Harry F. Murphy  
Secretary  
Board of Police Commissioners  
Police Headquarters  
Kansas City 6, Missouri

Dear Sir:

This is in answer to your request for an official opinion of this office wherein you ask:

"Section 84.350, Revised Statutes 1949, which applies to qualifications of police commissioners and Section 84.570 as applies to police personnel set out the residential requirements. At the election held in Kansas City on November 2, 1954, certain areas were annexed by Kansas City. The annexation, however, not to become effective until 1956.

"Will you please give us an opinion as to whether a commissioner or an employee can at this time move into the annexed area and retain his position."

As to police commissioners, Section 84.350 RSMo 1949 sets forth the following requirements for qualification:

"The said commissioners shall be citizens of the state of Missouri and shall have been residents of the respective cities in which they are appointed to serve for a period of four years next preceding their appointment;"

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As to policemen or officers of police, Section 84.570 RSMo 1949 sets forth the following qualifications:

"No person shall be appointed policeman or officer of police who shall have been convicted of any offense, the punishment of which may be confinement in the state penitentiary; nor shall any person be appointed who is not proven to be of good character, or who is not proven to be a bona fide citizen and resident of such city for a period of at least one year and a citizen of the United States, or who cannot read and write the English language and who does not possess ordinary physical strength and courage, nor shall any person be originally appointed to said police force who is less than twenty-one years of age."

Thus, the statute requires that in order to qualify as a member of the board of police commissioners, the commissioners "shall have been residents of the respective cities in which they are appointed to serve for a period of four years next preceding their appointment," and as to policemen and officers of police, the statute provides that no person shall be appointed to such position "who is not proven to be a bona fide citizen and resident of such city for a period of at least one year." A search of the authorities reveals no case exactly in point on this matter; however, in the case of State ex rel. Johnson v. Donworth, 127 Mo. App., 377, the St. Louis Court of Appeals held that one who was elected an alderman of a city of the fourth class and later moved out of the ward which he was elected to represent thereby lost his qualifications for such office and was subject to ouster therefrom. In this case, the statute required that in order to be eligible to the office of alderman, the candidate must be a resident of the ward from which he is elected. In reaching this conclusion, the St. Louis Court of Appeals said, l.c. 380:

"No doubt if a person was elected alderman without those qualifications, he might be ousted from office; and thus far the contention of the defendant's counsel, that the section prescribes who shall be eligible for election, is sound. But the section

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goes further, and, in our opinion, requires a continuance of those qualifications to entitle one elected alderman to remain in office. If an incumbent should cease to be a citizen of the United States, or a resident of the city, it is conceded he would lose his right to hold the office. The requirement that he shall be a resident of the ward from which he is elected is no less imperative, and we think change of residence to another ward disqualifies him to represent the ward by which he was chosen and forfeits his right to the office."

This case was cited with approval by the Supreme Court of Missouri En Banc in the case of State ex rel. City of Republic v. Smith, 139 SW2d 929, 345 Mo. 1158. In this connection, see also the decision of the Kansas City Court of Appeals in State ex rel. Lowe v. Banta, 71 Mo. App. 32. The general rule as to the requirement of residency is stated in 42 Am. Jur. 916, Public Officers, Section 46, as: "Where residence is made a condition of eligibility to office it should exist at the time and for the period required by law."

In this particular case, it is contemplated that one or more of the commissioners or policemen may wish to move into an area the annexation of which has been approved by the voters but that such area will not become finally annexed until some date in the future. It would seem that where the procedure for annexation of this territory has not been completed, the territory must be considered as being outside of the limits of the city in that residence therein would not qualify one for membership in the police force under the provisions of the statutes quoted above.

A somewhat similar situation was before the Supreme Court of Kansas in the case of State ex rel. Conderman v. Jones, 219 Pac. 2d 706, 169 Kan. 521, where the statute required that before one could qualify for mayor of a city, he must live in such city for a period of two years prior to his election. The successful candidate had moved into a residence in a suburban area outside of the boundaries of the city for a period of time within the two years before his election, and the Supreme Court, with apparent reluctance, held that such residence in the suburbs outside the limits of the city would disqualify the successful candidate from holding office.

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In view of the fact that annexation ordinance No. 15950 provides that the annexation authorized therein shall not take effect until January 1, 1959; that ordinance No. 15951 provides that the annexation authorized therein shall not take effect until January 1, 1958; and that ordinance No. 16136 provides that the annexation authorized therein shall not take effect until January 1, 1957, it is the conclusion of this office that if a commissioner or an employee should move his residence into the area covered by any one of these ordinances, he would thereby become disqualified to retain his position as commissioner or as policeman or officer of police of Kansas City, Missouri.

The above conclusion is reached on the assumption that it would be the intention of the person involved to move his residence into such area. If there should be any question of intent to move his residence, then such problem would have to be determined upon the fact situation of the individual case.

#### CONCLUSION

On the basis of the foregoing, it is the conclusion of this office that if a commissioner or policeman or an officer of police moves into an area which the voters have voted to annex but the annexation of which has not been completed, he would thereby become disqualified to retain his position.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Fred L. Howard.

Very truly yours,

John M. Dalton  
Attorney General

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