

CITIES OF THE THIRD CLASS:
CITIES, TOWNS, AND VILLAGES:
ANNEXATIONS:
ELECTIONS:
CANDIDATES:
COUNCILMEN:
RESIDENTS:

Previous residence in the territory annexed to the City of Macon is equivalent to residence in the City of Macon for the purpose of computing the period of residence required by Section 77.060, RSMo 1959, relating to candidates for councilman.

February 19, 1965

OPINION NO. 89

Honorable James N. Foley
Assistant Prosecuting Attorney
Macon County
Macon, Missouri



Dear Mr. Foley:

This opinion is being rendered pursuant to your letter of January 15, 1965, in which you ask the following question:

"Does a person meet the residency requirements of Section 77.060, R.S.Mo. 1959, if he has lived in the same house for the last 30 years, but up until November 3, 1964, that house was not within the limits of the City of Macon, however, on that date that house, along with other territory, was annexed by the City of Macon?"

The question this opinion deals with is whether previous residence in the territory annexed to the City of Macon is equivalent to residence in the new territory for the purpose of computing the period of residence required by Section 77.060, RSMo 1959.

Section 77.060, relates to the qualifications of councilmen in cities of the third class and provides as follows:

"No person shall be councilman unless he is at least twenty-one years of age prior to taking office, a citizen of the United States, and an inhabitant of the city for one year next preceding his election, and a resident of the ward from which he is elected six months next preceding his election. Whenever there is a tie in the election of a councilman, the matter shall be determined by the council."

The similar principle of law was involved in the case of Gibson v. Wood, 105 Ky. 740, 49 SW 768, 43 LRA 699, cited in 37 Am. Jur. 860, Municipal Corporations, Section 230. While the defendant in such case had resided in his present home more than the three year statutory period before his election, the territory upon which his residence was located had been a part of the City of Louisville for about two months at the time of his election to city office.

In ruling that the defendant had met the residency requirements of the Kentucky statute, the Court stated at page 770:

"In the case at bar the defendant, Wood, has done no act by which he should lose any of his political rights, either as a resident of the town of Enterprise or as a resident of the city of Louisville. The city of Louisville has seen fit to incorporate the town of Enterprise, and make it a part of the city of Louisville. In my opinion, when the city of Louisville annexed the town of Enterprise, it adopted the conditions then existing in the town of Enterprise, as to residence and citizenship, as a part of the city government, and former citizens of the town of Enterprise, who thus became citizens of the city of Louisville, were entitled to all their rights, as former citizens of Enterprise, in determining their eligibility to office in the city of Louisville. When the defendant and his territory became parts of the city of Louisville, they are entitled to all the benefits that belong to all the other property and citizens of the city of Louisville. To hold otherwise would be to bring persons into the city of Louisville, and to burden them with city taxation and all the burdens of our city government, without granting them all the privileges which it had granted to its other residents. It would put the burdens on all residents alike, but would give different rights to different classes of citizens, by distinguishing the old resident from the annexed resident. It follows that the defendant was eligible to the office to which he was elected. . ."

This case was later cited with approval by the Court of Appeals of Kentucky in Meffert v. Brown, 116 SW 779.

Honorable James N. Foley

This principle is enunciated in 62 CJS 919, Municipal Corporations, Section 749c which states:

"Residence in an annexed territory for the statutory period immediately preceding annexation is equivalent to residence in the new territory . . ."

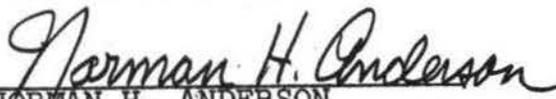
For other authorities so holding, see: 37 Am. Jur. 860, Municipal Corporations, Section 230; Municipal Corporations, 3 McQuillin 274, Section 12.59 (3rd Edition Revised); Charles S. Rhyne, Municipal Law, 125 Section 8-4.

CONCLUSION

It is therefore the opinion of this office that previous residence in the territory annexed to the City of Macon is equivalent to residence in Macon for the purpose of computing the period of residence required by Section 77.060, RSMo 1959, setting out the residential qualifications of councilmen in third class cities. Therefore, a person residing for thirty years in the same house which was not part of the City of Macon until annexed on November 3, 1964, meets the requirements of Section 77.060, RSMo 1959 and such person may file for the Macon City Council on February 21, 1965, and run in the primary election on March 9, 1965.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Gary A. Tatlow.

Very truly yours,


NORMAN H. ANDERSON
Attorney General