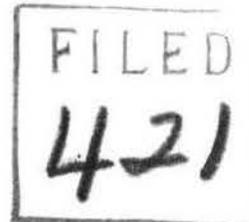


December 30, 1965



Honorable William Fickle
Representative of Platte County
Missouri House of Representatives
7406 Tomahawk Road
Parkville, Missouri

Dear Mr. Fickle:

This letter is in response to a request for an opinion on the following questions (as restated by this office):

1. Where the director of a public water supply district moves his residence from one subdistrict to another, does he forfeit his office under Section 247.040 (5) RSMo 1959, and, if so, at what time does he cease to be a member of the board?

2. What constitutes an "absence or disability of the president" under Section 247.100-143, RSMo 1959, that will allow the vice-president to countersign the district warrants?

In answering your first question we must assume that the director has in fact made a valid change of residence with an intent to change permanently his residence. In other words, it was not a temporary change of address. This matter of residence is a question of fact and intent. Resolution of this question is not without considerable difficulty under all the facts and circumstances (See State ex inf Reardon v. Mueller, 398 SW 2d 53) and can usually only be determined by a Court having jurisdiction of the proceedings. (See opinion attached No. 27, dated November 8, 1948, to Clarence Evans).

Section 247.040 (5), supra, relating to residence of members of the Board of Directors of the District reads in part as follows:

"* * *The decree of incorporation shall also divide the district into five subdistricts and shall fix their boundary lines, all of which subdistricts shall have approximately the same area and shall be numbered. The decree shall further contain an appointment of one resident

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freeholder from each of such subdistricts, to constitute the first board of directors of the district. No two members of such board so appointed or hereafter elected or appointed shall reside in the same sub-district. * * *

In 67 C.J.S. "Officer" §15, at page 128, we find the following statement:

"When a requirement of residence is imposed, however, it is mandatory and its validity has been upheld." (See cases cited)

In 67 C. J. S. supra, §50 page 209 it states:

"Where an incumbent of a public office who, to be qualified for the office, must reside in the particular district moves out of the district with intention of remaining permanently outside it, the office which he holds is regarded as vacant * * *."

See also McQuillin "Municipal Corporations", Volume 3, #12.65 at page 284.

While we have found no cases involving a water district, we believe the case of State ex rel Johnston v. Donworth, 127 Mo. App. 377, 105 SW 1055, to be relevant and persuasive. This was an action to determine the qualification of an elected alderman who later moved into another ward. While it involved the construction of the statutes relative to a city of the fourth class, we think the reasoning valid in this case. The Court said:

"* * *Section 5911 also prescribes the qualifications of aldermen in such cities and requires them to be twenty-one years of age, citizens of the United States, inhabitants of the city for one year preceding the election and residents of the ward from which they are elected. 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

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election, is sound. But the section 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 disqualified him to represent the ward by which he was chosen and forfeits his right to the office. It is argued for defendant that the phrase 'no person shall be an alderman,' means no one shall become an alderman unless he has the prescribed qualifications; the word 'be' having in this connection the sense of 'become'. But this is to unduly narrow its meaning. It not only forbids a person to become an alderman unless he is eligible under the section, but also forbids him to be one. That is, to remain one if he becomes disqualified. * * *."
(Emphasis Added)

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"Several incongruities arise if we accept the reasoning of defendant's counsel. If a person elected alderman is a resident of the ward on the day of the election, but immediately moves into another ward, he could serve his two years' term. And if all the aldermen of a city should happen to move into one ward during their respective terms of office, they would still constitute the board of aldermen. Such contingencies are opposed to the policy of the statute, which policy is to require aldermen to be residents of the ward, not only when elected but during their terms of office. * * *."

We conclude that, when a director moves his residence from a water subdistrict from which he was originally appointed or elected into another subdistrict with intent to permanently reside therein the courts may hold that the office of director is forfeited. The court will at that time rule on the date the

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office was vacated.

We regret we cannot answer your second inquiry because the answer depends on specific facts and circumstances without which we could only speculate and hypothesize.

Yours very truly,

NORMAN H. ANDERSON
Attorney General

RCA/ms

Enclosure: Op. # 29, 11/8/48