

HOUSE OF REPRESENTATIVES:
REPRESENTATIVE DISTRICTS:
REAPPORTIONMENT:
RESIDENCE:

A representative in the 1967 Legislature (74th General Assembly) is qualified under Article III, Section 4 of the Constitution to represent a district any part of which is within the county in which the representative resides.

February 7, 1967

OPINION No. 104 (1967)
545 (1966)

Honorable Richard J. Rabbitt
State Representative - 8th District
Missouri House of Representatives
4340 Forest Park
St. Louis, Missouri 63108



Dear Representative Rabbitt:

This opinion responds to your request which reads as follows:

"My question is whether it is necessary for a state representative to live in the legislative district from which he has been elected for at least one year, since the new reapportioned districts will be less than one year old when the 74th General Assembly convenes."

This problem involves the interpretation of Article III, Section 4, of the Constitution which provides:

"Each representative shall be twenty-four years of age, and next before the day of his election shall have been a qualified voter for two years and a resident of the county or district which he is chosen to represent for one year, if such county or district shall have been so long established, and if not, then of the county or district from which the same shall have been taken."
(Emphasis added.)

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Section 21.080, RSMo 1959, is identical to the language in Article III, Section 4, of the Constitution.

In construing the intent and meaning of the Constitution, our Missouri Supreme Court, en banc, has stated in *State vs. Neill*, (1966) 397 S.W. 2d 666 (l.c. 669):

"The Constitution in general is subject to the same rules of construction as other laws with due regard being given to the broader scope and objects of the Constitution as a charter of popular government, and intent of the organic law is the primary object to be attained in construing it."

The Court, in the *Neill* case, supra, reiterated the rule for statutory construction, (l.c. 669):

"In determining the meaning and application of statutory provisions, this court must ascertain the legislative intent from the words used, if that is possible, and in doing so give to such words their plain and ordinary meaning so as to promote the object and manifest purpose of the statutes."

Keeping in mind the rules of statutory construction enumerated in the *Neill* case, supra, especially that the language used is to be given its plain and ordinary meaning, let us examine these pertinent sections. Broken down into their component clauses, the qualifications in Article III, Section 4, are:

1. Be at least 24 years of age;
2. Be a qualified voter for two years;
3. Be a resident of the County or District which he is chosen to represent for one year;
4. If the County or District has not been established for one year then be a resident of the county or district from which the same shall have been taken.

Since representative districts were reapportioned in 1966 manifestly the primary problem is the construction of the last clause of this section.

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The resolution of this problem appears to turn upon the construction of the language "county or district". It should be remembered that this section was written in the Constitutional Convention in the light of the philosophy that each county had at least one representative and some counties had more than one. Our problem here involves a situation where a county has multiple representative districts within the county and this language of the Constitution must be interpreted in the light of the entirely changed philosophy of apportionment of representative districts brought about by the required reapportionment of the state with respect to representative districts to conform to the one man - one vote doctrine. Our investigation of the Constitutional Convention debates offers no aid in the solution of this problem.

Examination of this section of the Constitution shows that the language "county or district" is used three times in the section. The first two times it seems clear that where representative districts have been established for more than one year the representative to be qualified must be a voter for two years and a resident of his district for one year. The last clause, however, is clearly intended to be an exception, and to apply only in the situation where the representative districts have not been established for one year, which of course is the situation which we have here.

There are three possible constructions. First, if we give the last clause the narrow construction that a person must be a resident of the new reapportioned district at the time he takes the office of representative, this would tend to ignore the clearly much broader language of the exception clause which uses the words "county or district". A second possible construction is that if the new reapportioned district includes portions of more than one former existing representative district then a representative would be qualified if he was a resident of any district from which the new reapportioned district was formed. This certainly is a logical construction of the language but here again it does ignore the broader language in the exception clause of "county or district". The third construction would be that a representative is qualified if he is a resident of the county in which all or any portion of a district is located. This construction gives full meaning to the disjunctive language "county or district".

To better illustrate our meaning and construction of this statute we attach hereto an Exhibit. This exhibit shows in the area marked "X" an entire county. In the Areas marked 1, 2, 3 and 4 are indicated representative districts before the reapportionment.

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In the area marked "A" is indicated a new reapportioned district which includes parts of former existing districts 1, 2, 3 and 4. Thus the first construction of Section 4 of the Constitution discussed above would require a representative to reside within the boundary of the district designated "A". The second construction discussed above would permit the representative from new district "A" to reside anywhere within former districts 1, 2, 3 and 4. The third construction would permit a representative to reside anywhere within county "X". The use of the word "or" between the words "county" and "district" makes these two descriptions of areas in the disjunctive.

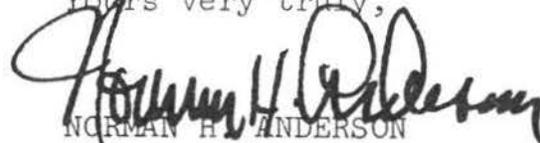
We think we should give the language "county or district" in the last clause of Section 4, its full breadth of meaning and not a restricted or narrow interpretation. This interpretation allows the electorate to choose any representative they wish who lives in the county. We perceive no reason from the language used in this clause why the electorate should be limited or was intended to be limited in their choice in the absence of language clearly limiting their choice. Manifestly after reapportionment, representatives so chosen who do not live within their district would be required to establish residence within their district before they would be qualified at a subsequent term.

CONCLUSION

A representative in the 1967 Legislature (Seventy-Fourth General Assembly) is qualified under Article III, Section 4 of the Constitution to represent a district any part of which is within the county in which the representative resides.

The foregoing opinion, which I hereby approve, was prepared by my Assistant J. Gordon Siddens.

Yours very truly,


NORMAN H. ANDERSON
Attorney General

EXHIBIT

