

Opinion No. 422  
Answered by Letter-Burns

November 1, 1968

Honorable Charles B. Adams  
Prosecuting Attorney of Adair County  
Kirksville, Missouri

Dear Mr. Adams:

This is in answer to your letter of recent date request-  
ing our views on the following two questions:

"1. Does the county clerk have the power  
to require an applicant for a Presidential  
ballot under the provisions of VAMS 111.063  
thru .067 to produce a Missouri drivers  
license. If not, is their other forms of  
proof other than the affidavit as provided  
in 111.065 that he can require.

"2. Is a college student who complys with  
the affidavit entitled to vote under the  
provisions of the above statute, and if so  
what are the requirements for 'legal resident'  
provided for in the statutes."

It is our view that there is no power or authority in a  
county clerk to require an individual applying for a ballot  
under the provisions of Section 111.063 to 111.067 RSMo as  
amended, to produce a Missouri Driver's License.

Such Sections provide generally for a citizen of the  
United States who is otherwise qualified to vote and who has  
resided in Missouri sixty days or more but less than one year  
prior to the date of a presidential election, to make an  
affidavit stating such fact and to receive and vote a ballot  
for presidential and vice presidential electors only.

The affidavit made out by the applicant for such presidential  
ballot is as follows:

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STATE OF MISSOURI )  
County of.....) ss

I, ..... do solemnly swear that I am a citizen of the United States; that prior to establishing Missouri residence my legal residence was in the ..... precinct of the ..... ward of the city of ....., County of ....., state of ..... and that I have resided at .... street, that I am at least twenty-one years of age; that I have been a legal resident of the state of Missouri since ....., 19 ....., residing at ..... street in the ..... precinct of the ..... ward of ..... county of...; that I have resided in that precinct less than one year and pursuant to the constitution and laws of this state I am entitled to vote for president and vice-president at the election to be held November ....., 19 ....; that I hereby make application for an official presidential ballot.

Signed .....

Subscribed and sworn to before me this ..... day of ....., 19 ....

.....  
County Clerk.

It is apparent from the affidavit form that the applicant declares under oath facts that show that he has been a resident of the State of Missouri for sixty days or more and less than one year.

We can find no requirement in the affidavit form or in any statute or in any case decided in the appellate courts of Missouri that such individual is required to exhibit to the county clerk a Missouri Driver's License.

We are attaching an official opinion rendered September 28, 1938 to Honorable Charles D. Brandom which holds that residence is a matter of intention to be deduced from the actions and utterances of the person whose residence is at issue.

As pointed out in the cases cited in the opinion, a residence can be established by any individual in the State of Missouri, if it is his intention to establish such residence.

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It is our view that when the declaration under oath has been signed by an individual stating that he has been a resident of the State of Missouri more than sixty days and less than one year and his actions are and have been consistent with the facts set out in such sworn declaration that the clerk is obliged to deliver a ballot to the applicant and that the clerk cannot refuse to deliver such ballot unless the applicant produces a Missouri Driver's License. There is no requirement in Sections 111.063 to 111.067 RSMo as amended or any other statutes that an individual must be the owner of an automobile or capable of driving an automobile or the possessor of a driver's license in order to cast a vote in this State.

In answer to your second question, we are enclosing a copy of an official opinion rendered October 24, 1940 to Mr. J W. Tucker which points out that college or university students can establish a residence in this State if it is their intention to do so, and that such intention is to be deduced from their statements and actions.

As pointed out above, the declaration under oath by such students of facts showing that they have been residents of the State for sixty days or more and less than one year, if consistent with the acts of such students, entitles such students to delivery by the clerk of a presidential ballot upon application and no requirement can be made by the clerk that such students produce Missouri Driver's Licenses.

Very truly yours,

NORMAN H. ANDERSON  
Attorney General

CBB:fb

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