ELECTIONS: Residence is a matter of intention.

September 28, 1938

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Hon. Charles D. Brandom
Prosecuting Attorney
Daviess County
Gallatin, Missouri

Dear Sir:

We have received your letter of September 20, 1938, which reads as follows:

> "I wish you would please furnish me with an opinion as soon as possible as to what constitutes a 'resident' of a township in the meaning of Section 12276 R.S. Missouri 1929, providing 'No person shall be eligible to any township office unless he shall be a qualified voter and a resident of such township.'
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> The particular case I have in mind is this: The president of one of the township boards of this county owns a farm in the township and retains a room there with some of his personal effects, but he operates and owns a business in another county where he rents a house for living purposes. He considers this county his legal residence and votes here. Is he eligible to hold the township office under the circumstances?"

In your letter quoted above you have set out Section 12276 R.S. Missouri 1929, in full. Conversely stated this statue provides that if a person is a qualified voter and a resident of a township he shall be eligible to hold a township office in the particular township.

We gather that the principal question about which you are concerned is whether or not the township officer you have described is, or can be as a matter of fact or law, a resident of the particular township under the circumstances. If this officer is a resident then apparently he is and has been for sometime a qualified voter, at least as far as the length of such residence is concerned.

The courts of this state have held many times that residence is largely a matter of intention. In the case of In Re: Lankford Estate, 272 Mo. 1, l. c. 9, the Court said:

> Residence is largely a matter of intention. (Lankford vs. Gebhart, 130 Mo. 621.) This intention is to be deduced from the acts and utterances of the person whose residence is in issue."

The case of In Re: Ozias' Estate, 29 S.W. (2d) 240, decided by the Kansas City Court of Appeals is almost directly in point as to the facts. In that case the deceased and his wife owned and lived on a farm in Johnson County, Missouri, for about twelve years after their marriage. They then purchased a house in Kansas City, Missouri, and moved there. A year or two thereafter they purchased another house in Kansas City and moved to the second house. The Court set out other pertinent facts as follows:

> "There was testimony tending to show that decedent retained control of his farm; that he spent week-ends with his wife in Kansas City; that he kept a bank account in Centerview and in Warrensburg in Johnson county; that he voted, when he did vote, at Centerview; that he told several of his friends and acquaintances that his home was on his farm; that he owned jointly with his wife a house in Kansas City, Jackson county, where his wife lived, and where he spent the weekends; that the telephone in the house in Kansas City was listed in the wife's name; that he rented a box at the post office in Centerview where he received mail; that he retained a room or rooms in the house on the farm furnished by him, and that this room or the rooms were occupied by him and his wife when there; or by him when there without his wife."

The principal question in the Ozias' Estate case was whether the deceased was a resident of Johnson County or Jackson County, and in which of the two counties the estate should be probated. In determining that the estate was properly probated in Johnson County and that the deceased was at all times a resident of Johnson County, the Court said:

> "The ruling herein depends upon the proper construction of the word domicile. Our Supreme Court held in Re Estate of Lankford, 272 Mo. 1, 197 S.W. 147, that residence is largely a matter of intention, to be deduced from the acts of a person.
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> Bouv. Law Dict., Vol. 1, page 915. Proof of domicile, or legal residence, does not depend upon any particular fact, but upon whether all the facts and circumstances taken together tend to establish the fact. Engaging in business and voting at a particular place are evidence of domicile there, though not conclusive. Hayes vs. Hayes, 74 Ill. 312; Inhabitants of East Livermore vs. Inhabitants of Farmington, 74 Me. 154. To constitute a change of domicile three things are essential: (1) Residence in another place; (2) an intention to abandon the old domicile, and (3) an intention of acquiring a new one. Berry v. Wilcox, 44 Neb. 82, 62 N.W. 249, 48 Am. St. Rep. 706. It has been held a wife's removal into another state for the benefit of her husband's health and a residence there for twelve years will not change the original domicile. In re Reed's Will, 48 Or. 500, 87 P. 763; Ensor vs. Graff, 43 Md. 291.
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> A person can have but one domicile, which, when once established, continues until he renounces it and takes up another

in its stead. It is not lost by temporary absence. The question is one of fact which is often difficult to determine. Words and Phrases, Second Series, Vol. 2, page 133; City of Lebanon vs. Biggers, 117 Ky. 430, 78 S.W. 213, 214. We hold there is substantial evidence of record to support the findings of fact, and we will not interfere with the judgment in this respect."

CONCLUSION

Under the rule that a person's residence is largely a matter of intention, we are of the opinion that the officer you have described is a resident of the township in which he was elected. He maintains a room in the house on his farm in such township which he appears to occupy occasionally. The fact that he "considers" his farm as his residence and that he votes there is the strongest evidence of his intention in this respect. Consequently this officer is eligible for township office under the terms of Section 12276 R.S. Missouri 1929.

Respectfully submitted,

J. F. ALLEBACH,
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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