

CITIZEN: Person citizen of county in which he permanently resides.

October 20, 1938



Honorable Claude T. Wood
Prosecuting Attorney
Pulaski County
Richland, Missouri

Dear Sir:

This department wishes to acknowledge your request for an opinion under date of October 15, 1938, which reads as follows:

"I should like to have your official opinion upon the following matter, to-wit:

"Section 9454 R. S. Missouri, 1929, provides, among other qualifications of County school superintendents, that he must be 'a citizen of the county.' Now under the following state of facts will the individual referred to be 'a citizen of the county' within the purview of said section on the first Tuesday in April, 1939?

"Subject was born and raised in Pulaski County and taught in Pulaski County until the Spring of 1937. Owns a farm in Pulaski County on which he and his wife and children lived until the fall of 1937. At which latter date he obtained employment in Laclede County, rented a house in Laclede County and moved with his family to said house and where he has been employed to the present time and where he will be so employed until April 15, 1939, at which time he expects to return with his family to his farm in Pulaski County. During the summer of 1938 he closed the house in Laclede County and attended the State University for two months. He rents the house in Laclede County one year at a time. He has always voted in Pulaski

County, having never voted elsewhere and having voted in Pulaski County at the Primary Election 1938. He pays real and personal property taxes in Pulaski County and prior to the present time has not paid taxes in any other county. But was assessed for his household furniture in Laclede County during the summer of 1938. All of the household goods and furniture owned by subject is in Laclede County House. Subject has always claimed Pulaski County as his legal residence and has ever intended to return to Pulaski County to make his home on his farm at the conclusion of his employment in some other county."

Section 9454, R. S. Mo. 1929, which you refer to in your letter, provides in part as follows:

"There is hereby created the office of county superintendent of public schools in each and every county in the state; the qualified voters of the county shall elect said county superintendent at the annual district school meeting held on the first Tuesday in April, 1923, and every four years thereafter; said county school superintendent shall be at least twenty-four years old, a citizen of the county, shall have taught or supervised schools as his chief work during at least two years of the eight years next preceding his election or appointment; or shall have spent the two years next preceding his election or appointment as a regular student in a state teachers' college or university, and shall at the time of his election hold a diploma from one of the state teachers' colleges or state university, or shall hold a state certificate, authorizing him to teach in the public schools of Missouri, or shall hold a first grade county certificate authorizing him to teach in the county of which he is superintendent; the person elected county school superintendent

at the annual school meeting held the first Tuesday in April, 1923, shall immediately upon his election, qualify under this article as county superintendent of public schools, and shall serve as such until the first Monday in July, 1927, or until his successor is elected and qualified. ***"

In the instant case, the subject has a temporary residence in Laclede County, but maintains his permanent residence in Pulaski County, where he was born, and to which he plans to return.

In the case of *Harding vs. Standard Oil Company*, 182 Fed. 421, 1. c. 424, the court points out that:

"The term 'residence' simply indicates the place of abode, whether permanent or temporary; 'domicile' denotes a fixed, permanent residence, to which, when absent, one has the intention of returning. *Corel vs. Chicago etc. Co.* (C. C.) 123 Fed. 452, 454."

It is apparent then that the domicile of the subject is Pulaski County. Can it be said that "citizenship" and "domicile" are synonymous?

The court, in the *Harding* case, supra, states (1. c. 423):

" 'Domicile' and 'citizenship' are substantially synonymous terms in most cases."

Did the subject, however, lose his domicile in 1937 by removing from Pulaski County and setting up a temporary residence in Laclede County?

In the case of *In re Ozias' Estate*, 29 S. W. (2d) 240, 1. c. 243, the court, in determining what constituted a change of domicile, said:

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"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."

And in holding that a person can have but one domicile which continues until he renounces it, said:

"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."

It is evident that the subject did not lose his domicile by setting up a temporary residence in Laclede County.

Citizenship and domicile being synonymous, we are of the opinion that your subject is a "citizen of the county" of Pulaski within the meaning of Section 9454, R. S. Mo. 1929, supra, although he is temporarily absent from said county until April 15, 1939.

Respectfully submitted

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APPROVED:

J. E. TAYLOR
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