

stitution; and therefore it is my opinion that the referenced exemption of the application of the Municipal Finance Act pertains only to those contracts which do not exceed the aggregate amount of \$250,000 as provided in the Municipal Finance Act itself.

In conclusion, it is my opinion that 1933 PA 99, as amended, supra, constitutes authority for villages, townships and cities to enter into certain contracts providing certain conditions and limitations are observed; and to the extent that such contracts do not exceed \$250,000 in the aggregate, they are not subject to the review requirements of the Municipal Finance Act; but to the extent the aggregate of such contracts does exceed \$250,000, then such contracts are a borrowing of money under the terms of the Municipal Finance Act so as to subject the borrowing to review for the providentiality of the borrowing and businesslike repayment.

FRANK J. KELLEY,
Attorney General.

760322.3

DOMICILE AND RESIDENCE: Members of legislature

WORDS AND PHRASES: "Domicile"; "Residence"

The terms "domicile" and "residence" are synonymous. The terms "residence" and "domicile" mean the place where a person has his or her permanent home. That place continues to be the domicile of a person unless he or she renounces it and takes up another domicile in its stead. The establishment of a new domicile consists of the two factors, physical presence and intent.

A legislators domicile in his or her home district remains unaffected where he or she owns or rents the year round a house, room, or apartment outside the legislative district so long as the legislator does not intend to change his or her domicile.

Opinion No. 4931

March 22, 1976.

Honorable Richard J. Allen
State Senator
The Capitol
Lansing, Michigan 48902

Recently you have written to request an opinion answering a number of questions related to the residency status of members of the State legislature. Before attempting to respond to each specific question, it may be helpful to outline some of the general principles underlying this area of the law.

The fundamental provision concerning the residency requirements for members of the legislature is Const 1963, art 4, § 7, which provides:

"Each senator and representative must be a citizen of the United States, at least 21 years of age, and an elector of the district he represents. The removal of his domicile from the district shall be deemed a vacation of the office. No person who has been convicted of sub-

version or who has within the preceding 20 years been convicted of a felony involving a breach of public trust shall be eligible for either house of the legislature.”

The requirements to be an “elector” are set forth in Mich Const 1963, art 2, § 1, which, as modified by US Const, Am XXVI, reads as follows:

“Every citizen of the United States who has attained the age of 18 years, [who has resided in this state six months], and who meets the requirements of local residence provided by law, shall be an elector and qualified to vote in any election except as otherwise provided in this constitution. The legislature shall define residence for voting purposes.” (Bracketed material held violative of United States Constitution by federal court¹)

Further amplification of this definition is provided in § 10 of the Michigan Election Law, 1954 PA 116, as amended, MCLA 168.10; MSA 6.1010, which states:

“The term ‘qualified elector’, as used in this act, shall be construed to mean any person who possesses the qualifications of an elector as prescribed in section 1 of article 2 of the state constitution and who has resided in the city or township 30 days.”

The term “residence” is explained in § 11 of the Michigan Election Law, as amended, MCLA 168.11; MSA 6.1011, which reads in relevant part as follows:

“(a) The term ‘residence’, as used in this act, for registration and voting purposes shall be construed to mean that place at which a person habitually sleeps, keeps his or her personal effects and has a regular place of lodging. Should a person have more than 1 residence, or should a wife have a residence separate from that of the husband, that place at which such person resides the greater part of the time shall be his or her official residence for the purposes of this act. This section shall not be construed to affect existing judicial interpretation of the term residence.

“(b) No elector shall be deemed to have gained or lost a residence by reason of his being employed in the service of the United States or of this state, nor while engaged in the navigation of the waters of this state or of the United States or of the high seas, [nor while a student at any institution of learning,] nor while kept at any almshouse or other asylum at public expense, nor while confined in any public prison. . . .” [Bracketed language held violative of state and federal constitutions, *Wilkins v Ann Arbor City Clerk*, 385 Mich 670; 189 NW2d 423 (1971)]

The Michigan Supreme Court in *Hartzler v Radeka*, 265 Mich 451; 251 NW 554 (1933), discussed the terms “domicile” and “residence”:

“Domicile is the place where a person has his home, with no present intention of removing, and to which he intends to return after going elsewhere for a longer or shorter time.

¹ *Dunn v Blumstein*, 405 US 330; 92 S Ct 995; 31 L Ed 2d 274 (1972).

"Residence has a more restricted meaning and may be the place where he lives while engaged in work or duty which keeps him away from his domicile. In Michigan the terms are used as synonymous. (Citation omitted)." [p 452]

In *School Dist No 1, Fractional, of the Twp of Mancelona v School Dist No 1 of Twp of Custer*, 236 Mich 677, 681; 211 NW 60 (1926), the Supreme Court stated:

". . . The word 'residence' as used in statutes relating to voting, eligibility to hold office, taxation, probate and administration of estates, etc., is synonymous with domicile. (Citation omitted)."

This rule was noted more recently in *Ortman v Miller*, 33 Mich App 451, 455; 190 NW2d 242 (1971).

The intention of the party involved is of the utmost importance to the establishment of his residence or domicile. As was said in *Reaume & Silloway, Inc v Tetzlaff*, 315 Mich 95, 99; 23 NW2d 219 (1946), quoting from *Wright v Genesee Circuit Judge*, 117 Mich 244; 75 NW 465 (1898):

"Residence means the place where one resides; an abode, a dwelling or habitation; especially, a settled or permanent home or domicile. Residence is made up of fact and intention. *There must be the fact of abode, and the intention of remaining.*" [Emphasis that of the Court, *Reaume & Silloway, Inc v Tetzlaff, supra*]

OAG, 1930-1932, p 134 (February 26, 1931), which quoted from *Warren v Board of Registration*, 72 Mich 398, 400, 402; 40 NW 553 (1888), stated:

"There can never, in the eye of the law, be more than one domicile of citizenship; and that continues, in the case of a citizen, till he himself renounces it absolutely, and takes up another in its stead. And such a domicile is not lost by absence in the State or out of the State, whether within or without the United States. In the case of *Harbaugh v. Cicott*, 33 Mich. 242, that doctrine was very fully explained, and applied to a registered elector in Detroit whose family had lived for some years in Royal Oak, where he paid them weekly visits. It was held that he could not lose his residence in Detroit, unless he intended to renounce it in fact, no matter how long he or his family might be away. [p 400]

* * *

". . . Mere bodily presence or absence can have no effect in determining residence, when once existing. There is probably not a precinct in any city which has not resident and qualified voters who spend most of their time in pursuits out of the ward or State; and persons who travel for pleasure or business, for long or short periods, do not lose [sic] their residence by such absence. Senators and Representatives and other persons often occupy residences in Washington, but they are not disfranchised for doing so. As explained in *Harbaugh v. Cicott*, a person cannot lose his residence, unless he voluntarily renounces it for another." [p 402]

It is well settled that the establishment of a new residence or domicile consists of two factors: (1) the fact of physical presence, and (2) the intention to remain. With these principles in mind, the specific questions listed in your letter can be stated and answered.

“And there a minimum number of days or nights that must be spent at one’s residence previous to filing for office, circulating petitions or announcing candidacy?”

One must have spent sufficient time in a district to become an elector before he can meet the qualifications of a legislator under Const 1963, art 4, § 7. In order to be a qualified elector, a person must reside in the political unit for 30 days under the provisions of MCLA 168.10, *supra*. Therefore, assuming that a person is a resident of the district in fact and in intention, he must be a resident for a minimum of 30 days to qualify to seek election to the legislature.

“Is there any minimal legal number of days that must be spent at that residence between filing and election or during a year of legislative service?”

As the previously discussed authorities indicate, once residential status is achieved, it continues until the individual intends to change it and physically removes himself to a new place. There is no minimum number of days which must be spent at the place of residence to continue its status as the legal residence of the candidate or of the elected official.

“If a candidate or an officeholder owns or rents year around a house, room, or apartment outside his legislative district in Lansing or elsewhere would this adversely affect his legal residency? Would there be any maximum number of days he could spend living under such arrangements outside the district?”

Not only is the legislator’s legal residence unaffected in the absence of an intention to change it as was noted above, but the statute specifically provides for the continuation of the legal residence of a State official. That statute, MCLA 168.11, *supra*, provides that “No elector shall be deemed to have gained or lost a residence by reason of his being employed in the service of . . . the state”

“If a married legislator moved his family to Lansing for the duration of a legislative session, would this automatically be ‘removal of his domicile from the district’ as described in the constitution?”

No, this would not constitute “automatic” removal of his domicile, but it would provide some evidence of an intent to establish a new residence. However, in view of the statutory provision relating to State service, and to the circumstances surrounding the move, the movement of a legislator’s family to Lansing for the duration of the legislative session with the intent of returning to the district thereafter would not, in my opinion, result in “removal of his domicile from the district”.

“What if they rented their home in the district for some period of the year?”

In this case, it is unlikely that it would be found that the legislator had removed his domicile from the district in view of the rule that a person

retains his domicile of origin until he changes it by acquiring another. To acquire a new domicile, it is necessary to have *both* physical presence and intent. Thus, if a legislator physically moved to Lansing without intent to make Lansing his home, his domicile would continue to be the place where he previously resided which, it may be assumed, would be his district. This would be true even if he rented his home, sold his home, or moved out of rented quarters without renting new quarters in his home district.

“Could a single legislator maintain a residence in Lansing and still qualify by declaring as his legal residence his parent’s home or that of some other relative or friend?”

Again, the answer is yes and for the same reasons as were discussed in the previous question. Residence or domicile within the concept of the Michigan Election Law requires the fact of physical presence as well as the intention to remain; the intention to continue a residence is sufficient to retain the original residence until it is changed by acquiring another residence.

“If a legislator ceases to maintain a home in the district by moving himself and his personal effects and, perhaps, by selling or ceasing to pay rent at what point has he ‘removed his domicile from the district?’ Would this occur when he left the district or when he established a new residence outside the district?”

Change of domicile was considered in the Michigan Supreme Court case of *Rue High, Appellant*, 2 Doug 515, 522 (1847), which stated principles applicable in this situation:

“ . . . a man retains his domicile of origin until he changes it, by acquiring another; and so each successive domicile continues, until changed by acquiring another. And it is equally obvious that the acquisition of a new domicile does, at the same instant, terminate the preceding one: (Citation omitted).”

Therefore, the legislator removes his domicile from the district when he establishes a new domicile elsewhere.

In answer to your remaining questions, Const 1963, art 4, § 16, provides in relevant part as follows:

“ . . . Each house shall be the sole judge of the qualifications, elections and returns of its members, and may, with the concurrence of two-thirds of all the members elected thereto and serving therein, expel a member. The reasons for such expulsion shall be entered in the journal, with the votes and names of the members voting upon the question. No member shall be expelled a second time for the same cause.”

Thus, the Constitution makes it clear that the power to judge the qualifications of its members, including their qualifications under the residency provisions, is exclusive with each house of the legislature.

FRANK J. KELLEY,
Attorney General.