

**OPINION
64-222**

May 15, 1964 (OPINION)

SCHOOL DISTRICTS

RE: Reorganization - Petitions - Residence

This is reply to your letter of May 12, 1964, relative to voting residence for the purpose of school district reorganization and residence for the purpose of signing petitions for school district annexation.

You state the following facts:

We have consistently followed the principle of each person having one and only one legal residence, this residence being determined by act and intent, and that one does not lose his right to vote in a given political subdivision unless and until he votes in another. For instance, one is a voting resident of School District X, for example, until he votes in another district even though he does not have his actual being in School District X. We have many situations of that kind.

Now in the signing of petitions for school district annexation, it would appear that the situation is similar.

My reason for writing for your interpretation of both reorganization and annexation residence is that we receive a lot of requests from the field. Some seem to think that residence for signing petitions is not the same as residence for voting on a school district reorganization plan, and also there are those who seem to insist that voting in school district reorganization is not the same as voting for township or county officials."

Section 15-47-05 of the North Dakota Century Code, as amended, provides:

QUALIFICATIONS OF SCHOOL ELECTORS AND OFFICERS. Any person who is a qualified elector under the general laws of the state is qualified to vote at the election of school officers in any school district of the state in which he is a resident, and is eligible to the office of school district treasurer, school district clerk, or member of the school board, or may be appointed as a judge or clerk of election."

Section 16-01-03, pertaining to the general election laws, provides that any person of the age of twenty-one years or upwards, who has resided in this state one year, in the county ninety days, and in the precinct thirty days next preceding any election, shall be a qualified elector at such election if he is a citizen of the United States.

If the person meets the qualifications set forth in section 16-01-03 he is entitled to vote at school district elections. We agree,

therefore, with the conclusion that each person has one and only one legal residence for voting purposes, such residence being determined by act and intent, and that one does not lose his right to vote in a given political subdivision unless and until he acquires a legal residence in another political subdivision. Voting in another political subdivision, whether it be at a municipal or statewide election, is evidence of the intent to give up the prior legal residence. Thus, for example, if a resident of School District X leaves the district and votes in a city election in another district such person is deemed to have given up his prior residence since in order to vote in the city election he must be a legal resident of the city.

Section 15-53-14 of the North Dakota Century Code, as amended, governing elections on reorganization plans, provides in part as follows:

* * * * the county superintendent shall call a special election of voters residing within the territory of each district * * * *."

We have construed this to mean that all persons eligible to vote at a general school district election within the district may vote on a reorganization plan including their district or portion of their district in which they claim legal residence. We do not believe the law requires that the person physically reside in the district. If they maintain their legal residence in the district for voting purposes they are entitled to vote. We would note an argument could be made that by using the term "voters residing in the district" the Legislature intended something more than legal residence in the district in order to vote therein. In other words, it could be contended the law requires physical residence as well as legal residence. We point this out for purposes of information only. As stated above we believe legal residence is sufficient to entitle a person to vote at a general or school district reorganization election.

Section 15-27-04 of the North Dakota Century Code, as amended, governing school district annexation, provides:

ATTACHMENT OF ADJACENT TERRITORY TO SCHOOL DISTRICT - PETITION. Territory contiguous to a public school district, whether in the same county or in another, may be attached to such school district and detached from the district of which it is a part by the county committee for the reorganization of school districts upon written application signed by two-thirds of the electors residing in the contiguous territory after hearing and subject to the limitations of sections 15-27-06 and 15-53-21."

Again we have construed the term "electors residing in the contiguous territory" to mean persons having their legal residence for voting purposes in such territory. Thus any person who is entitled to vote at a general school election in such territory is entitled to sign an annexation petition involving such territory. We would again point out that the use of the words "electors residing" does cast some doubt upon the meaning of this statute. However, we have consistently construed this to refer to legal residence for voting

purposes and not physical residence.

HELGI JOHANNESON Attorney General