

## Opinion No. 66-47

April 13, 1966

**BY:** OPINION OF BOSTON E. WITT, Attorney General Joel M. Carson, Assistant Attorney General

**TO:** Betty J. Turner, County Clerk, P. O. Box 898, Silver City, New Mexico

### QUESTION

#### FACTS

A person has filed a declaration of candidacy for state senator from Grant County. You state that this person established a business and a home in Grant County about December 5, 1965, and since that time has lived in Grant County. He changed his voter registration to Grant County on March 2, 1966. However, this person served as a state representative from Catron County in the 1966 legislative session.

#### QUESTION

Is this person a legal resident of Grant County and therefore eligible to run for the nomination for state senator from Grant County in the 1966 Primary Election?

#### CONCLUSION

No, but see analysis.

### OPINION

#### {\*56} ANALYSIS

Article VII, Section 2, New Mexico Constitution provides that

"Every citizen of the United States who is a legal resident of the state and is a qualified elector therein, shall be qualified to hold any public office in the state . . ."

Article VII, Section 1, New Mexico Constitution, and Section 3-1-1, N.M.S.A., 1953 Compilation provides that a qualified elector is one who

"has **resided** in New Mexico twelve months, in the county ninety days, and in the precinct in which he offers to vote thirty days, next preceding the election . . ."

There are certain other requirements in order to run for nomination in the primary election. Section 3-11-6, N.M.S.A., 1953 Compilation (P.S.) provides that in order to be a candidate for nomination in a primary election (1) a person must not have changed his

party affiliation within one year prior to the issuance of the primary election proclamation by the governor, and (2) the person must have been a member of the political party in which he seeks to be a candidate for nomination for at least one year preceding the date of the primary election proclamation.

We see then that the requirements to be met in order to be a candidate for nomination in a primary election are the following:

- (a) one year's residence in New Mexico prior to the election;
- (b) ninety days' residence in the county prior to the election;
- (c) thirty days' residence in the precinct prior to the election;
- (d) no change in party affiliation within one year prior to issuance of the primary election proclamation; and
- (e) membership in the particular political party for at least one year prior to issuance of the primary election proclamation.

Residence is made up of fact and intention. There must be the fact of abode and the intention of remaining there indefinitely. **State exrel MaGee v. Williams**, 57 N.M. 588, 261 P.2d 131 (1953). Thus a person may at any time physically reside in one county while having a legal residence in another. The intention of the person seeking to change his legal residence may not be proved merely by reference to his declaration, **Everman v. Thomas**, 303 Ky 156, 197 SW2d 58 (1946), although declarations may be considered in arriving at his intentions, **McWhorter v. Reynolds**, -Tex-, 156 SW2d 321 (1941). Conduct is a more important factor in determining intentions as actions speak louder than words. If there exists a discrepancy {\*57} between declarations of intentions and acts, the declarations must necessarily yield to the conclusions to be drawn from the acts. **Barrett v. Parks**, 180 SW2d 665 (1944), **In Re Erickson**, 18 N.J. Misc. 5, 10A.2d 142 (1939).

The question which is here presented exemplifies the legal principles set forth above. Until March 2, 1966, all the objective manifestations of the person as to the subjective intention necessary for the maintenance of a legal residence indicated that he was a resident of Catron County and not Grant County. Until March 2, 1966, the person maintained his voting residence in Catron County, he owned and maintained property in Catron County, and he served as a representative of Catron County during the 1966 session of the legislature. As far as the facts now before us are concerned he did not submit his resignation as a legislator from Catron County nor is there any indication that he intended to be a resident of any county other than Catron County until March 2, 1966, when he declared to the County Clerk of Grant County in his affidavit of registration that he had been a resident of Grant County for ninety days preceding the date of his registration.

It is true that the person owns and maintains a business and home in Grant County. However, as we have already mentioned the mere fact of physical residence is not sufficient for the establishment of a legal residence. See **State ex rel MaGee v. Williams**, supra, in which the respondent maintained a home both in the country and in the City of Truth or Consequences. We have had to look both at the person's place of physical abode and to his conduct reflecting his intention as to the establishment of a legal residence. Based on the facts which have been submitted we see no alternative but to conclude that the person here in question was not a legal resident of Grant County as of December 5, 1965. Nor does it appear that he was a resident of Grant County ninety days prior to the primary election in which he seeks to be a candidate.