

## Opinion No. 32-489

July 8, 1932

**BY:** E. K. Neumann, Attorney General

**TO:** Hon. Judson G. Osburn, District Attorney, Roswell, New Mexico.

{\*167} We have your letter of July 2nd, 1932, enclosing letter from Mr. D. C. Berry, Lovington, New Mexico, relative to the residence of his wife who for the past several years has been secretary and a member of the Lovington Municipal School Board.

{\*168} The facts upon which advice is requested are taken only and solely from Mr. Berry's letter, are not based upon any independent investigations and our conclusions are to be considered only as applying to the facts so stated.

These facts are as follows:

Mrs. Berry has been a member of said Municipal School Board for seven or eight years; for the past three years she has served as secretary of the board; these people moved to Lovington in December, 1922, and have at all times since that date up to March 23rd of this year maintained their home and resided continuously at Lovington; on said March 23rd, by reason of unemployment, a temporary move was made to a ranch which, we assume, is owned by the parties and which is located in the southeastern part of the county; this move is only temporary, and Mr. Berry intends to return to Lovington to assume the duties of county treasurer, to which office he has been nominated, before the first of the year, if he is elected; their home in Lovington is not rented, contains a part of their furniture and is in readiness for their return.

Because of this temporary change the signature of Mrs. Berry, as secretary of the board, has been questioned, and an opinion as to its legality during this temporary absence is requested.

Section 8, Chapter 119, Laws of 1931, amends Section 120-903 of the 1929 Compilation and provides that the said board shall be . . . residents of the district . . . And the question, therefore, turns upon the meaning of the words "residents of the district."

In innumerable cases the terms "residence" and "domicile" are used interchangeably, and In re Deans, 208 Fed. 1018, it was held that the word "residence" is an elastic term of which no exact definition applicable to all cases can be given at law, and that it must be construed in accordance with the object and intent of the statute in which it occurs, it being generally held that whether a party's removal constitutes a change of residence depends on his intention in making such removal or the animus manendi. Also in Hanson vs. Hanson, 151 N. Y. S. 861, it is held that what constitutes a person's residence is largely a matter of intention, that the word "residence" is really synonymous

with the word "domicile". That it means that place to which one, wherever he may be, intends to return.

In Jones vs. Reser, 160 Pac. 58, 61 Okl. 46, it is held that "residence" means a settled or fixed abode of a character indicating permanency, or at least for an indefinite time. That is signifies a party's permanent home and principal establishment, to which, whenever he is absent, he has the intention of returning.

Numerous other cases construing this term are set out in Words and Phrases, Third Series, Volume 6, and from a study of these cases, it is our conclusion, based on the facts as heretofore stated, that the Berrys have not lost their legal residence in Lovington; and that their move to the ranch being only temporary has no effect upon Mrs. Berry's qualifications to serve as a member of the Municipal School Board of Lovington, or upon her duties and qualifications as secretary of such board.

By Frank H. Patton,

Asst. Attorney General