

Opinion No. 40-3474

March 12, 1940

BY: FILO M. SEDILLO, Attorney General

TO: Mr. Joe J. Tafoya, Hot Springs, New Mexico.

{*142} In response to your letter of March 11 making certain inquiries with reference to municipal elections, please be informed as follows:

In the first place, before anyone can vote in a municipal election the official registration affidavit of the voter must **show on its face** that he is a resident within the limits of the municipal corporation. Section 24, Chapter 152, Laws of 1939.

Unless the affidavit so shows on its face such a voter cannot vote at a municipal election in any event.

Further answering your inquiries, please be informed that the mere fact that a person temporarily removes himself from the limits of the municipal corporation does not deprive him of the right to vote in municipal elections especially if he has moved back into the municipality and is living there at the time of the election. Of course, residence is a matter of intention, and intention is an abstract thing of the mind that can be gathered only from a person's declarations, acts, conduct, etc.

The statutory definition of residence for election purposes is found in Section 1 of Chapter 153, Laws of 1939, and is as follows:

"A person's residence is his fixed habitation to which when absent he intends to return."

Trusting the foregoing will be of some information to you, I am,

By: FRED J. FEDERICI.

Asst. Atty. Gen.