

Opinion No. 44-4604

October 25, 1944

BY: C. C. McCULLOH, Attorney General

TO: Mr. Scott H. Mabry, Assistant District Attorney, Albuquerque, New Mexico

We are in receipt of your letter of October 20, 1944 in which you state:

"A voter is registered in Sandoval County, but works in Bernalillo county each day. He maintains his home in the former county. Does his working in Bernalillo County have anything to do with his residence?"

In your letter you state that in your opinion there is only one answer to this question and that is that the person involved is a resident of Sandoval county I certainly concur in your opinion as the proposition seems so clear that I fail to see how anyone could question it.

The author in 20 C. J. 68 says:

"The term 'residence' as used in constitutional and statutory provisions relating to the qualifications of electors is synonymous with **home or domicile**, denoting a permanent dwelling place to which the party, when absent, intends to return * * * and a sojourn in a place, however long, without the intention of making it a permanent home, will not qualify the sojourner as an elector unless it is otherwise provided by constitution or statute. * * * Three rules seem to be reasonably established; (1) that a man must have a residence somewhere; (2) that when once established it is presumed to continue until a new one is established; and (3) that a man can have but one domicile of citizenship at a time."

The author says at page 20:

"In order to work a change of residence there must be both in fact and in intention an abandonment of the former residence and a new domicile acquired by actual residence (home) coupled with an intention to make it a permanent home. Thus, an absence for months or even years, if all the while the party intended it as a mere temporary arrangement to be followed by a resumption of his former residence, will not be an abandonment of such residence or deprive him of his right to vote thereat, the test being the presence or absence of animus revertende."

The following quotation, appearing at page 21, is directly in point:

"A person does not lose his residence in one county by residing and doing business in another county during a portion of the year where he had no intention of changing his residence. **Neither does a person change his residence from one election district**

to another by renting rooms in the latter district and occupying them as an office, but not for the purpose of eating and sleeping."

In view of the foregoing, it is my opinion that a person maintaining his home in Sandoval county is a resident of Sandoval county if he has the intention to make that his residence, and the fact that he works in Bernalillo county would in no way detract from or limit his right to call Sandoval county his home and vote therein. I am enclosing herewith a copy of this opinion for your convenience.

By ROBERT W. WARD,

Asst. Atty. General