

OPINION NO. 91-045**Syllabus:**

1. For purposes of the residency requirement of R.C. 3.15, if, as a result of the adoption of a new apportionment plan, the number used to identify the district from which a representative was elected is assigned to a geographic region that differs in any way from the geographic region of the district from which the representative was elected, the boundaries of the representative's district have changed. Should such a boundary change occur, thereby causing the representative's permanent residence to be located outside the boundaries of the numerical district from which he was elected, the representative may, pursuant to R.C. 3.15(B), continue to represent his current district for the remainder of his term without complying with the residency requirement of R.C. 3.15(A) that he reside for his entire term within the district from which he was elected.
2. A candidate for election to the Ohio House of Representatives must establish residency in a district one year prior to election as a representative for that district, except where a plan of reapportionment or a provision of the Ohio Constitution is invalidated after the adoption of such plan, thereby giving candidates an additional thirty days to move, regardless of the date of the next election. Ohio Const. art II, §3; Ohio Const. art. XI, §13.
3. A member of the Ohio House of Representatives who is affected by the operation of R.C. 3.15(B) may move his permanent residence outside of the district he was elected to represent without threat of forfeiture of office as of the date of the adoption of the 1991 apportionment plan, whether that plan is ultimately deemed valid or invalid under applicable law.
4. For purposes of R.C. 3.15, a person is a resident of the place where he dwells or has his abode; a person's "permanent residence" is his dwelling place or the place where he has established his home on other than a temporary or transient basis.

To: Vern Riffe, Speaker of the House, Ohio House of Representatives, Columbus, Ohio

By: Lee Fisher, Attorney General, October 16, 1991

In H. Res. 255, 119th Gen. A. (1991) the Ohio House of Representatives has requested my opinion concerning residency requirements applicable to members of that body. The specific questions presented read as follows:

Whether Ohio law prohibits an incumbent member of the Ohio House of Representatives from establishing his or her principal place of residence outside of the district he or she was elected to represent and yet continue to represent that district?

What constitutes principal place of residence for the purposes of the Ohio Constitution and the Ohio Revised Code?

Residency Requirements For State Representatives

Residency requirements for members of the House of Representatives are set forth in Ohio Const. art. II, §3 and R.C. 3.15. Ohio Const. art. II, §3 states in part: "representatives shall have resided in their respective districts one year next preceding their election, unless they shall have been absent on the public business of the United States, or of this State." Thus, pursuant to art. II, §3, in order to be eligible for election as a representative of a particular district, one must have resided in that district, with certain exceptions, for one year next preceding the election.

R.C. 3.15 sets forth a requirement that all representatives continue to reside in their districts throughout their terms, thus, stating, in part:

(A) Except as otherwise provided in division (B) of this section, at all times during his term of office:

(1) Each member of the general assembly...shall be a resident of the district he represents.

....

(B) Any person who fails to meet any of the requirements of division (A) of this section that apply to him shall forfeit his office. Division (A) of this section applies to persons who have been either elected or appointed to an elective office. *Division (A) of this section does not apply to a member of the general assembly...during the remainder of his existing term of office after there is a change in his district's...boundaries that leave his permanent residence outside the district....*

R.C. 3.15(A), therefore, establishes the general rule that a representative continue to reside in the district he represents throughout his term. *See generally* Ohio Const. art. II, §1 (establishing the House of Representatives as one part of the General Assembly); Ohio Const. art. II, §2 (stating in part: "Representatives shall be elected biennially by the electors of the respective house of representatives districts; their term of office shall commence on the first day of January next thereafter and continue two years"); R.C. 3501.02(C) (providing for elections of state officers in even-numbered years). Failure to comply with the residency requirement of division (A)(1), with one exception, results in the representative's forfeiture of office.

It is this one exception, set forth in R.C. 3.15(B), which is of critical importance given the recent reapportionment of Ohio's House of Representatives districts. The Secretary of State has recently issued his own interpretation of R.C. 3.15(B), attached hereto as Appendix A. There are portions of his interpretation with which I agree and portions with which I disagree.

We agree that new district boundaries became effective immediately upon passage of the 1991 apportionment plan for purposes of the one-year residency requirement set out in Ohio Const. art. II, §3 as it applies to the 1992 elections. We also agree that the district a member of the General Assembly represents for the remainder of his term, even after a new apportionment plan has been adopted, is the district that he was originally elected to represent.

The Secretary of State and I disagree about the proper interpretation and application of R.C. 3.15(B), which sets out an exception to the residency requirement of R.C. 3.15(A). I believe that the Secretary of State's articulated view represents a far too restrictive reading of R.C. 3.15(B) and, effectively, reads the exception set forth in that section out of the Revised Code. A discussion of both interpretations of R.C. 3.15 is set out below.

Pursuant to R.C. 3.15(B), where the boundaries of a representative's district change such that the district he was elected to represent no longer encompasses the location of his permanent residence, the representative's need to comply with the requirement of R.C. 3.15(A), that he reside within his district throughout his term, is inapplicable. Thus, in the situation described in R.C. 3.15(B), a representative may continue to represent, for the remainder of the term for which he was elected, the district that he was elected to represent, *without having to comply* with the requirements of R.C. 3.15(A).

To understand how this exception operates in practice, it is necessary to first identify what constitutes the "change in district boundaries" that triggers the exception. Since, in the absence of a court order, it is only the constitutional reapportionment process that can alter district lines for the General Assembly, the reference to "change" in R.C. 3.15(B), when applying that provision to members of the House of Representatives, must be the change caused by reapportionment.

Ohio Const. art. XI, §1 provides for five persons to be "responsible for the [decennial] apportionment of this state for members of the general assembly." The duty imposed upon these people is, in part, to "meet and establish in the manner prescribed in this Article the boundaries for each of ninety-nine house of representative districts," art. XI, §1. Pursuant to Ohio Const. art. XI, §5 "[e]ach house of representatives district shall be entitled to a single representative in each General Assembly." District boundaries may be changed only at the time and in the manner specified in article XI. Ohio Const. art. XI, §6. Within art. XI, §§3, 7, 8, and 9, the Constitution prescribes various requirements as to the population and geographic composition of each district. Article XI, §10 requires the ninety-nine House of Representatives districts to be "created and numbered" in the order therein specified.

The more difficult issue central to the interpretation of R.C. 3.15(B) and its application to members of the General Assembly is understanding which "district" is associated with a representative both before and after district lines are redrawn as the result of reapportionment. A review of the constitutional and statutory provisions governing that process reveals that the only consistent mechanism for identifying districts both before *and* after reapportionment is their numerical designation. The only General Assembly districts recognized in law are the geographic boundaries set up by the decennial apportionment process, which are identified by a number assigned under the procedure set out in the Ohio Constitution. Hence, the "district boundaries" at issue in R.C. 3.15(B) must be those that correspond to the numerical designation the districts bear.

Identification of a representative's district by reference to the geographic territory of that district is not possible, because in the process of reapportionment, the territory of the representative's district may be divided in such a way that portions of that district are now included in a number of other districts. When such a division occurs, reference to the geographic territory of the representative's former district will not identify a single district that exists after the changes in district boundary lines have been made. Thus, it is not possible to determine what constitutes each representative's new district by reference to the geographic territory of his old district.

Identification of a representative's district for purposes of R.C. 3.15(B) by reference to the population he was initially elected to serve is also not possible. Again, in the reapportionment process, a previously recognized district may be carved into numerous pieces, thus splintering the population of electors in the district into numerous districts, possibly even in equal proportion, or combining the majority of the electors in one district with the majority of electors in another. Determination of a single representative's new district under such circumstances, as opposed to that of some other representative, would not be possible.¹

District numbers are the only constant. Regardless of how the territory encompassed within the former districts may be combined or divided, there will continue to be ninety-nine House of Representatives districts, each identified by a single number. Of course, there may be a few districts, such as single-county districts, whose boundaries will not change with reapportionment. To apply to the

¹ While there is a constitutional provision that provides a guide for determining what constitutes a Senate member's post-reapportionment district if the Senator has more than two years remaining in his term, and that provision uses a percentage of population test, *see* Ohio Const. art. XI, §12, no such guide is available for determining post-apportionment House of Representatives districts under R.C. 3.15(B), or under any other statutory or constitutional provision. The very absence of a similar provision, with its attendant mechanism for resolving the complicated scenarios described above (splintered districts, overlapping majority populations, etc.) indicates that the General Assembly rejected the use of the population test for later-enacted R.C. 3.15(B).

representatives of those districts a "geographic" or "population" test rather than a "numerical designation" test, however, will undermine uniform application of the law. No matter how appealing, at first glance, a deviation from the numerical designation standard may be, no other standard is provided for in the statute and no other standard will permit a uniform application of the statute.

Accordingly, for purposes of the residency requirement of R.C. 3.15, if, as a result of the adoption of a new districting plan, the number used to identify the district to which a representative was elected is assigned to a geographic region that differs in any way from the geographic region of the district to which the representative was elected, the boundaries of the representative's district have changed. Should such a boundary change occur, thereby causing the representative's permanent residence to be located outside the boundaries of the numerical district from which he was elected, the representative may, pursuant to R.C. 3.15(B), continue to represent his current district for the remainder of his term without complying with the residency requirement of R.C. 3.15(A) that he reside for his entire term within the district from which he was elected. Consequently, in the circumstances described in R.C. 3.15(B), a member of the House of Representatives may reside outside of the district he was elected to represent without forfeiting his office.²

The Secretary of State has expressed his opinion, contrary to that set forth above, that any member of the House of Representatives who, in the circumstances described in R.C. 3.15(B), fails to maintain residency in the district he was elected to represent may subject himself to forfeiture of office for the remainder of his term. In support of his conclusion, the Secretary of State asserts that R.C. 3.15(B) permits a representative to move his permanent residence within only that portion of his current district that overlaps a portion of his "new district."

The Secretary of State provides no guidance with respect to his interpretation of the concept of a representative's "new district." Still, applying any definition of "new district," his interpretation of R.C. 3.15(B) cannot be correct because the movement he contemplates is nothing more than that which is already permitted under R.C. 3.15(A)—namely, movement of a representative's permanent residence anywhere within the boundaries of his current district. Rather, when the circumstances contemplated by R.C. 3.15(B) occur, the statute expressly states that the residency requirement of R.C. 3.15(A) "does not apply." The Secretary of State's interpretation renders R.C. 3.15(B) a nullity. I cannot agree that the General Assembly intended to pass a meaningless statute.

R.C. 3.15(B) spells out an absolute exception to the residency requirement of R.C. 3.15(A). The exception must serve a purpose. That purpose must be to permit a representative *to move out of his current district* without being subject to forfeiture of office. Thus, I conclude that whenever district boundaries change, such that a newly created district bears the numerical designation of his current district, and his permanent residence is not now contained within the boundaries of the numerical district he was elected to represent, the representative may establish his permanent residence *anywhere* without forfeiture of office for the remainder of his term.

Finally, I also conclude that a member of the House of Representatives who is affected by the operation of R.C. 3.15(B) may move his permanent residence without threat of forfeiture of office as of the date of the passage of the 1991 apportionment plan, whether that plan is ultimately deemed valid or invalid under applicable law. There is litigation pending that challenges the validity of the 1991 apportionment plan. While invalidation of the plan, as ultimately determined by the Ohio or United States Supreme Court would give a member of the House of Representatives an additional thirty days to change his residence for purposes of

² Appendix B to this opinion sets forth illustrations of hypothetical 1981 and 1991 apportionment plans, accompanied by examples and explanations of how R.C. 3.15(B)'s operation affects individual representatives under each plan.

satisfying the residency requirement of Ohio Const. art. II, §3, *see* Ohio Const. art. XI, §13, the right to move without forfeiting a member's current office is triggered by the plan's passage, not the resolution of litigation relating to that plan.

A Representative's Residence Under R.C. 3.15

In its second question the House asks: "What constitutes principal place of residence for the purposes of the Ohio Constitution and the Ohio Revised Code?" The word "residence" itself is not susceptible of a single definition that would accurately describe its meaning as used throughout the Revised Code and the Ohio Constitution. *See generally Kelm v. Carlson*, 473 F.2d 1267, 1271 (6th Cir. 1973) ("[t]he word 'resident' has many meanings in the law, largely determined by the statutory context in which it is used"); *Sturgeon v. Korte*, 34 Ohio St. 525 (1878) (finding the word "residence," as used in the Ohio Constitution, to be subject to the rules relating to the selection or change of residence existing when the Constitution was adopted); *State ex rel. Kaplan v. Kuhn*, 8 Ohio N.P. 197, 200 (C.P. Hamilton County 1901) ("['r]esidence' is the favorite term employed by the American legislator to express the connection between person and place, its exact signification being left to construction to be determined from the context"). In some instances, the General Assembly has specifically defined the word "residence," whether or not qualified by other terms such as "legal" or "permanent," in a variety of ways throughout the Revised Code, depending upon the context in which the term is used. *See, e.g.*, R.C. 3503.02 (establishing rules for determining the residence of person offering to register or vote); R.C. 5122.01(S) (defining "[r]esidence" for purposes of R.C. Chapter 5122 concerning hospitalization of the mentally ill); R.C. 5123.01(S) (defining "[r]esidence" and "legal residence" for purposes of R.C. Chapter 5123 governing the Department of Mental Retardation and Developmental Disabilities). In other instances, the word "residence" (or "resident") appears in a statute without specific legislative definition. *See, e.g.*, R.C. 5126.05 (discussing, *inter alia*, the duties of county boards of mental retardation and developmental disabilities with regard to "residents" and "former residents" of the county). In light of the numerous definitions applicable to the term "resident" or "residence," as used in different contexts, I will limit my discussion to the meaning of the terms "resident" and "permanent residence" as they are used in R.C. 3.15, the statute at issue in the first question.

R.C. 3.15(A)(1) requires that a member of the General Assembly be a "resident" of the district he represents. The term "resident," as used in R.C. 3.15(A), is not legislatively defined. Pursuant to R.C. 1.42, it is presumed that the legislature intended the word to be read as it is commonly or ordinarily used. *Webster's New World Dictionary* 1209 (2d college ed. 1978) defines "resident," in part, as: "a person who lives in a place, as distinguished from a visitor or transient...." In the case of *In re Fore*, 168 Ohio St. 363, 155 N.E.2d 194 (1958), the court found the word "resident," as it is commonly used, to refer simply to a person's place of dwelling. Similarly, in *Jackman v. Jackman*, 110 Ohio App. 199, 201, 160 N.E.2d 387, 389-90 (Hamilton County 1959), the court stated that the word "resident," as used in its popular sense, means "one who has his place of abode" in a particular place. Thus, a person is a "resident," as that term is commonly used, of the place where he dwells or has his abode. Simply renting a post office box or an apartment within a district, without actually dwelling or establishing a home there, does not make one a resident of that district.

The meaning of "permanent residence," as used in R.C. 3.15(B), again is not specifically defined by statute. *Black's Law Dictionary* 1308-09 (6th ed. 1990) defines "residence," in part, as a "[p]lace where one actually lives or has his home; a person's dwelling place or place of habitation; an abode; house where one's home is...." The word "permanent" is defined, in part, as "lasting; abiding; stable; not temporary or transient. Generally opposed in law to 'temporary,' but not always meaning 'perpetual.'" *Id.* at 1139 (citation omitted). Thus, based upon the common meaning of those words, a "permanent residence" refers to a person's dwelling place or the place where he has his home on other than a temporary or transient basis.

Of course the questions of whether a particular person qualifies as a "resident" and whether a particular place constitutes that person's "permanent

residence," for purposes of R.C. 3.15, are questions of fact, *see Sturgeon v. Korte*, which cannot be determined in an opinion of the Attorney General, 1990 Op. Att'y Gen. No. 90-003. Based upon the common meanings of these terms, however, I conclude that, for purposes of R.C. 3.15, a person is a resident of the place where he dwells or has his abode. In turn, a person's "permanent residence" is his dwelling place or the place where he has established his home on other than a temporary or transient basis.

It is, therefore, my opinion, and you are hereby advised, that:

1. For purposes of the residency requirement of R.C. 3.15, if, as a result of the adoption of a new apportionment plan, the number used to identify the district from which a representative was elected is assigned to a geographic region that differs in any way from the geographic region of the district from which the representative was elected, the boundaries of the representative's district have changed. Should such a boundary change occur, thereby causing the representative's permanent residence to be located outside the boundaries of the numerical district from which he was elected, the representative may, pursuant to R.C. 3.15(B), continue to represent his current district for the remainder of his term without complying with the residency requirement of R.C. 3.15(A) that he reside for his entire term within the district from which he was elected.
2. A candidate for election to the Ohio House of Representatives must establish residency in a district one year prior to election as a representative for that district, except where a plan of reapportionment or a provision of the Ohio Constitution is invalidated after the adoption of such plan, thereby giving candidates an additional thirty days to move, regardless of the date of the next election. Ohio Const. art II, §3; Ohio Const. art. XI, §13.
3. A member of the Ohio House of Representatives who is affected by the operation of R.C. 3.15(B) may move his permanent residence outside of the district he was elected to represent without threat of forfeiture of office as of the date of the adoption of the 1991 apportionment plan, whether that plan is ultimately deemed valid or invalid under applicable law.
4. For purposes of R.C. 3.15, a person is a resident of the place where he dwells or has his abode; a person's "permanent residence" is his dwelling place or the place where he has established his home on other than a temporary or transient basis.

Appendix A



BOB TAFT
Secretary of State
State of Ohio

MEMO TO: Vern Riffe, Speaker Ohio House of Representatives
Stanley Aronoff, President Ohio Senate
Robert Boggs, Minority Leader, Ohio Senate
Corwin Nixon, Minority Leader, Ohio House

FROM: Bob Taft, Ohio Secretary of State

RE: New District Lines and Residency Requirements

Date: October 9, 1991

We have received a number of inquiries with respect to the letter from Robert Bracco, our Chief Elections Counsel, to Representative Tom Watkins dated September 18, 1991 which deals with new district lines and residency requirements. A copy of that letter is enclosed.

As Ohio's Chief Elections Officer, I am writing this memo to affirm and elaborate on the opinion we provided to Representative Watkins.

The issue is whether a legislator may continue to represent his current district for the balance of his term if he moves out of the district in order to qualify to run in a new district in 1992.

This question is addressed under section 3.15 of the Ohio Revised Code. Under 3.15 (A)(1) it states:

Except as otherwise provided in division (B) of this section at all times during his term of office each member of the General Assembly shall be a resident of the district he represents. (emphasis added)

Under Section 3.15(B) it states:

Any person who fails to meet any of the requirements of division (A) of this section that apply to him shall forfeit his office.

The only exemption to this residency requirement is found under the balance of 3.15(B) which states in part:

Division (A) of this section does not apply to a Member of the General Assembly during the remainder of his existing term of office after there is a change in his district boundaries that leaves his permanent residence outside the district... (emphasis added)

In our opinion the exemption permits a legislator whose district is reapportioned to exclude the location of his residence to continue to represent the district for the remainder of his term without having to relocate his residence. The implication is that for the purposes of the residency requirement contained in O.R.C. 3.15 (A)(1), the existing

district boundaries remain in effect during the remainder of the existing term.

We do not interpret this section to allow a legislator to move to a totally new district that does not encompass any part of his old district and still be able to represent his old district for the remainder of his term.

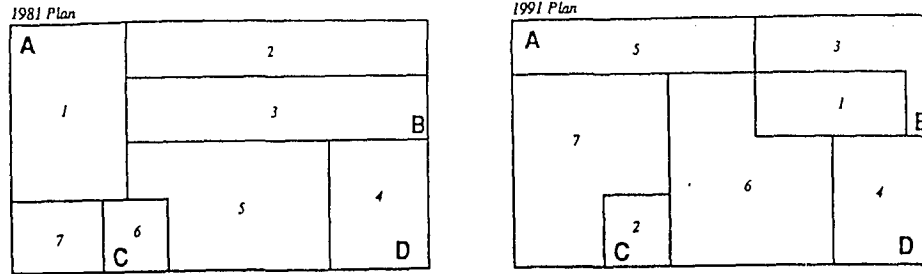
Even though the new district lines created by the Apportionment Board became effective immediately for the purposes of establishing residency for running as a candidate in 1992, the old district boundary lines are still operative and remain in effect for the purpose of legislators continuing to represent their constituents for the remainder of their term until new legislators are elected for these new districts in 1992.

I interpret O.R.C. 3.15(B) to carve a narrow exception to the General requirements of O.R.C. 3.15(A)(1). All legislators who choose to move to a totally new district not a part of their old district within the next 30 days to meet the one year residency requirement for next year's election should be cautioned that failing to maintain residency in their old district may subject them to forfeiture of office for the remainder of their terms.

Any questions of the interpretations or application of this law can be directed to the Election Section of my office at 466-2585.

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Appendix B



The maps above, along with this discussion, are designed to illustrate the conclusions reached in this opinion. The two maps represent a hypothetical 1981 districting plan and a hypothetical 1991 districting plan. On the maps, the permanent residence of Representatives A, B, C, & D are shown. The consequences for these representatives of this hypothetical redistricting are discussed below.

Representative A: "A" was elected to represent District #1 as that district was defined by the 1981 reapportionment plan. Under the 1991 plan, "A" now lives in District #5. According to the law, since "A"'s permanent residence is outside the 1991 version of District #1, "A" may move without relinquishing the representation of the 1981 version of District #1 for the remainder of his current term. "A" may stay where he is and run in District #5 next time, or may move to any new 1991 district he chooses in order to establish residency there. For example, "A" may choose to move into District #7 because that was the part of the old District #1 in which he believed he was strongest. Still, it is important to note that once the provision permitting him to move is triggered, "A" may move anywhere without relinquishing his representation of old District #1 for the remainder of his term.

Representative B: "B" was elected to represent District #3 as that district was defined by the 1981 reapportionment plan. Under the 1991 plan, even though District #3 is a very different looking place, "B" still has her permanent residence in District #3. Since "B"'s permanent residence is still in her district, she can not move out of the District #3 which she was elected to represent (the 1981 version of District #3) without forfeiting her office. "B" may certainly stay where she is and run for the newly configured District #3, but if she chooses to establish residency for the next election in any part of new District #1 or District #6, not a part of old District #3, she forfeits her representation of old District #3 upon moving to her newly selected district.

Representative C: "C" was elected to represent District #6 as that district was defined by the 1981 reapportionment plan. Under the 1991 plan, "C"'s permanent residence is in District #2. Since "C"'s permanent residence, under the 1991 plan, falls outside of the 1991 version of District #6, "C" may move even though the 1981 version of District #6 and the 1991 version of District #2 are geographically identical. Because of the geographical identity of old District #6 and new District #2, it seems unlikely that "C" would exercise his right to move, but he could do so if he wanted to. Instead, in all likelihood, "C" would not move, and would simply run to be elected as the representative of District #2 next time.

Representative D: "D" was elected to represent District #4 as that district was defined by the 1981 reapportionment plan. The 1991 version of District #4 is identical to the 1981 District #4. They are geographically identical and carry the same district number. Accordingly, "D"'s permanent residence is still within the boundaries of her district and she cannot move out of District #4 without forfeiting her representation. Because the districts are identical, it seems unlikely that she would want to move, but if for any reason she wanted to run in a different district next time, she could only establish residency in that new district by moving and forfeiting her representation of District #4 for the remainder of her current term.