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RESIDENCE—SECTION 3503.02 RC, FORMERLY 4785-31 GC, DOES NOT AUTHORIZE MOVE FOR TEMPORARY PURPOSES WITHIN COUNTY—MOVE FOR TEMPORARY PURPOSES INTO ANOTHER STATE OR COUNTY OF THIS STATE FOR PERIOD NOT TO EXCEED THREE YEARS WITHOUT LOSS OF VOTING RESIDENCE AUTHORIZED.

SYLLABUS:

Section 3503.02, Revised Code, 4785-31, G.C., while authorizing a move for temporary purposes into another state or county of this state for a period of not to exceed three years without loss of voting residence, does not authorize a move for temporary purposes within a county.

Columbus, Ohio, October 28, 1953

Hon. Ted W. Brown, Secretary of State
Columbus, Ohio

Dear Sir:

I am in receipt of your request for my opinion, which reads as follows:

"This office has, in the course of administering elections, issued instructions to the county Boards of Elections regarding voting residence. In construing Sections 3503.02, Revised Code (4785-31, G. C.) we have ruled that a person may make a 'temporary' move from one county to another, but that the statute does not authorize a 'temporary' move *within* a county. It is our thought that the legislature did not intend to allow such 'temporary' moves within a county, due to the chances of fraud that might occur in non-registration areas and the necessity, in registration counties, of having persons registered from their actual residence. We have discovered numerous cases of 'ward-hopping,' where a person is registered from a residence within a city, but actually resides outside the city. The city registration many times is a requisite for holding a city office, and these persons have thus claimed a 'temporary' move within the county.

"In view of the importance of uniformity of construction of this statute throughout the state, I respectfully request your opinion on whether or not a person may lawfully move for 'temporary' purposes within a county, and thus maintain a voting residence in a precinct other than the one in which he actually resides."

Section 3503.02, Revised Code, 4785-31, G.C., reads as follows:

"All registrars and judges of elections, in determining the residence of a person offering to register or vote, shall be governed by the following rules:

"(A) That place shall be considered the residence of a person in which his habitation is fixed and to which, whenever he is absent, he has the intention of returning.

"(B) A person shall not be considered to have lost his residence who leaves his home and goes into another state or county of this state, for temporary purposes only, with the intention of returning.

"(C) A person shall not be considered to have gained a residence in any county of this state into which he comes for temporary purposes only, without the intention of making such county his permanent place of abode.

"(D) The place where the family of a married man or woman resides shall be considered to be his or her place of residence; except that when the husband and wife have separated and live apart, the place where he or she resides the length of time required to entitle a person to vote shall be considered to be his or her place of residence.

"(E) If a person removes to another state with the intention of making such state his permanent residence, he shall be considered to have lost his residence in this state.

"(F) If a person removes to another state with the intention of remaining there an indefinite time and making such state his place of residence, he shall be considered to have lost his residence in this state, notwithstanding the fact that he may entertain an intention to return at some future period.

"(G) If a person removes to the District of Columbia, or other federal territory, to engage in the government service, he shall not be considered to have lost his residence in this state during the period of such service, and likewise should he enter the employment of the state, the place where such person resided at the time of his removal shall be considered to be his place of residence.

"(H) If a person goes into another state and while there exercises the right of a citizen by voting, he shall be considered to have lost his residence in this state.

"All questions of the right to vote shall be heard and determined by the judges of election in the precinct where the question arises.

"'Temporary purposes,' as used in this section, shall be construed to permit a period of absence not in excess of three years."

It might be stated parenthetically that this section has been amended, effective January 1, 1954. Paragraph (G) will then read as follows:

“If a person removes out of the county to engage in the services of the United States government, he shall not be considered to have lost his residence in this state during the period of such service, and likewise should he enter the employment of the state, the place where such person resided at the time of his removal shall be considered to be his place of residence.”

The provision of the present statute that “All questions of the right to vote shall be heard and determined by the judges of election in the precinct where the question arises.” will be eliminated from Section 3503.02 at that time and Section 3501.11, Revised Code, pertaining to the duties of the boards of elections, will provide, in paragraph (Q) thereof, that the board shall “Investigate and determine the residence qualifications of electors.”

In Opinion No. 1499, Opinions of the Attorney General for 1950, page 106, it was held that residence qualifications of an elector are questions of fact and should be determined in accordance with Section 4785-31, General Code, cases of doubt to be determined by the judges of the election in the precinct where the question arose. While this conclusion is correct, it would not follow that the precinct judges are given unbridled discretion in such matters. Under Section 3501.05, Revised Code, 4785-7, G. C., you, of course, are given the power to advise members of boards of elections as to the proper method of conducting elections and to prepare rules, regulations and instructions for the conduct of elections. Such authority being vested in you by virtue of Section 3501.05, as chief election officer of the State of Ohio, it would follow that your rulings in such capacity should be adhered to, unless clearly contrary to law.

A careful analysis of Section 3503.02, Revised Code, reveals that the General Assembly has provided a basic definition of “voting residence” in paragraph (A) and that the remaining paragraphs, (B) through (H), constitute either (1) guides or ground rules which assist in determining residence qualifications under the terms of paragraph (A), or (2) exceptions to paragraph (A).

It will be noted that while provision is made in paragraph (B) for one who leaves his home and goes into another *state* or *county* for “temporary purposes” only, with the intention of returning, the statute con-

tains no such provision as to one who leaves his home and goes to another part of the same county. Under the doctrine of *expressio unius est exclusio alterius*, it must reasonably be presumed that the General Assembly did not intend to authorize similar absence by removal from one part of a county to another for "temporary purposes."

It will also be noted that paragraph (G), which in effect constitutes an exception to paragraph (A), makes reference only to *federal* or *state* employment. While paragraph (G), as amended effective January 1, 1954, is not existing law, the language employed therein is further indicative of a legislative intent not to authorize a movement within a county without a change of voting residence. It will be observed that such paragraph will require a removal "out of the county."

With the exception of paragraph (D), dealing with the place of residence of a married man and woman, paragraphs (B) through (H) have no application to the question of determining residence where a person has moved from one location to another within the same county. In essence, therefore, such question must be determined within the meaning of paragraph (A). This paragraph provides that the place shall be considered the residence of a person in which his habitation is fixed and to which, whenever he is absent, he has the intention of returning.

Did the General Assembly, by this language, intend to permit a person to move from X to Y within the same county and still maintain a voting residence at X merely because of some remote intent to return to X at some future period? I believe not. For a discussion of remote, as distinguished from immediate intention, see the concurring opinion of Taft, J. in the case of *State, ex rel. Klink v. Eyrich*, 157 Ohio St., 338, at page 342.

If the intention referred to in paragraph (A) be merely a remote intention, it would follow that such condition could continue to exist almost indefinitely as to a person moving from one place in a county to another and would not be limited even to the three year limitation for the removals for "temporary purposes" to another state or another county, as authorized by paragraph (B). Such an interpretation would make the test of voting residence, in cases of movements within the same county, entirely a subjective one. As a practical matter, so long as the individual stated that he intended eventually to return to X, the election officials would be forced to accept him as a qualified voter at X, regardless of his actual daily residence at Y.

The only statutory language authorizing a person to vote in one part of a county after moving to another part of the same county is that contained in Section 3503.01, Revised Code, 4785-30, G. C., which reads:

“* * * provided that any qualified elector who in good faith moves his residence from one precinct to another precinct in the same county at any time subsequent to the fortieth day preceding an election may vote at such election in the precinct from which he moved wherein his voting residence had been legally established. * * *”

This language was under consideration in the case of *State, ex rel. Ehring v. Bliss*, 155 Ohio St., 99, the fourth paragraph of the syllabus therein reading:

“Under the provisions of amended Section 4785-30, General Code, any qualified elector who in good faith removes from one precinct to another precinct in the same county at any time subsequent to the fortieth day preceding an election shall have the right to vote at such election in the precinct from which he moved wherein his voting residence had been legally established.”

Presumably the failure of the General Assembly to authorize movements for “temporary purposes” within the same county or to provide that upon employment by the county the place where a person then resided should be considered his place of residence was based on the notion that all of the Ohio counties are sufficiently small as not to compel a change of daily residence in order to accept employment within the county. Regardless, however, of the motivation of the General Assembly, it is clear that no such statutory authorization has been given.

To the extent that this opinion is in variance with Informal Opinion No. 76 for 1951, said informal opinion is hereby overruled.

In specific answer to your question, it is my opinion that Section 3503.02, Revised Code, 4785-31, G. C., while authorizing a move for temporary purposes into another state or county of this state for a period of not to exceed three years without loss of voting residence, does not authorize a move for temporary purposes within a county.

Respectfully,

C. WILLIAM O'NEILL

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