

1141.

APPROVAL, CONTRACT FOR ELIMINATION OF GRADE CROSSING  
OVER TRACKS OF HOCKING VALLEY R. R. NEAR GALLIPOLIS,  
OHIO.

COLUMBUS, OHIO, November 1, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter under date of October 28, 1929, inclosing a copy of a contract providing for the elimination of a grade crossing over the tracks of the Hocking Valley Railroad Company on State Highway 399, located just north of Gallipolis in Gallia County, Ohio.

I have carefully examined the agreement and finding it correct in form I hereby approve the same.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

1142.

COLLEGE STUDENT—AFFIDAVIT SHOWING INTENTION TO RESIDE  
INDEFINITELY IN COUNTY WHERE INSTITUTION LIES MAY NOT  
BE REQUIRED FOR VOTING PRIVILEGES AT GENERAL ELECTION.

*SYLLABUS:*

*A college student possessing the qualifications of an elector prescribed in Sections 4862 and 4863, General Code, who asserts his intention to remain in the county in which the college is located, after he ceases to attend such college, cannot be compelled to make an affidavit to that effect, as a prerequisite to his voting at a general election. However under Sections 5060 and 5061, General Code, he may be challenged either by a challenger or a judge of elections and examined under oath by the latter as to his residence qualifications.*

COLUMBUS, OHIO, November 2, 1929.

HON. R. D. WILLIAMS, *Prosecuting Attorney, Athens, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

“As you quite well know, Ohio University is located at Athens, Ohio. Quite a number of adult students are enrolled therein. The ensuing November election is not far off. Our Board of Deputy State Supervisors of Elections has requested this office to inquire of you your notion of the extent of evidence required to qualify a student to vote under the provisions of Section 5078-8 of the General Code or under any other section or sections touching on such qualification. Do you suggest that the polling places be furnished with formal written affidavits to be subscribed by such prospective student voters and should such affidavit by such prospective voter show affirmatively that he or she then had ‘the intention of continuing to reside’ in this county at the conclusion of their school term or terms; should this affidavit be considered by the voting officials as conclusive or are they privileged to take additional testimony,

or in the absence of any additional testimony, are they bound to accept such affidavit and permit such students to vote?

Should you suggest such an affidavit do you care to indicate its form?

I am appreciative of the fact that there is not now much time intervening between this query and the November election. However, our Election Board just this day suggested this request. I will indeed appreciate it if you can get a reply to me in time to facilitate matters at the ensuing election."

Section 5078-8, General Code, to which you refer, reads :

"If any person in this state shall move or shall have moved from one county to another to attend any college, academy, normal school, university or other institution of learning located in such other county, his legal residence for the purpose of voting shall be deemed to be the county from which he came, hereinafter known as his home county, and he shall not vote in the county into which he has moved, being that in which such college or other institution of learning is located, unless he shall have the intention of continuing to reside in such county into which he has moved when he shall have ceased to attend such institution of learning. Whenever any college, academy, normal school, university or other institution of learning has in attendance such persons herein described who are desirous to vote at any election at which they are eligible to vote in the proper precinct in their home county, the president of such college or other institution of learning or any three such persons who are desirous to so vote, may, in writing, request the Board of Deputy State Supervisors of Elections of the county in which the same is located to cause some officer or member of such board to visit the institution on some day to be fixed by the board, and of which the president or such three persons, as the case may be, shall have ample notice, not more than twenty nor less than five days before the date of any such election so to be held. On the date so fixed such officer or member of the board shall attend at such institution in a room to be furnished by the president, between the hours of eight o'clock a. m. and twelve o'clock noon and between the hours of one o'clock p. m. and six o'clock p. m. and there administer oaths, certify to affidavits, receive and receipt for any absent voter's ballots in the manner provided for in Section 5078-3 herein from any persons in attendance at such institution who may be desirous of availing themselves of the provisions of this act. For this service such officer or member shall receive the usual per diem and mileage paid to presiding judges in such county, to be paid as such judges are paid out of the treasury of the county in which such institution of learning is situated. In the event that there are more than one hundred such absent voters who desire to vote at such institution, the county board of Deputy State Supervisors of Elections may designate and appoint more than one of its members, officers or clerks to attend as herein provided, such additional officials to receive pay and mileage as hereinabove provided in cases when only one person has been designated."

Consideration of your question requires construction of the foregoing statute as to the phrase: "he shall not vote in the county into which he has moved \* \* \* unless he shall have the intention of continuing to reside in such county into which he has moved when he shall have ceased to attend such institution of learning."

In *State ex rel. Hathaway*, 22 O. C. C., N. S., 314, it was held :

"The residence of a person is the place in which he has fixed his habi-

tation without any present intention of removing therefrom, and to which whenever he is absent he has the intention of returning."

In considering your question, there must be kept in mind the provisions of Section 4862, General Code, providing that an elector must have had residence in the state for one year, in the county for thirty days and in the township, village or ward for twenty days prior to the election.

There should also be borne in mind the provisions of Section 4866, General Code, reading as follows :

"All judges of election, in determining the residence of a person offering to vote, shall be governed by the following rules, so far as they may be applicable :

1. 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.

2. 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 merely, with the intention of returning.

3. A person shall not be considered to have gained a residence in any county of this state, into which he comes for temporary purposes merely, without the intention of making such county his home.

4. The place where the family of a married man resides shall be considered and held to be his place of residence, except where the husband and wife have separated and live apart, then the place where they resided at the time of the separation shall be considered and held to be his place of residence, unless he afterward, and during the time of such separation, remove from such place, in which case the county, township, city or village in which he resides the length of time required by the provisions of this chapter to entitle a person to vote, shall be considered and held to be his place of residence.

5. If a person remove to another state with an intention to make it his permanent residence, he shall be considered to have lost his residence in this state.

6. If a person remove to another state, with an intention of remaining there an indefinite time, and as a place of present residence, he shall be considered to have lost his residence in this state, notwithstanding he may entertain an intention to return at some future period.

7. If a person remove 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 any county during the period of such service, and the place where such person resided at the time of his removal shall be considered and held to be his place of residence.

8. The mere intention to acquire a new residence, without the fact of removal, shall avail nothing; neither shall the fact of removal without the intention.

9. If a person go into another state, and while there exercise the right of a citizen by voting, he shall be considered to have lost his residence in this state.

10. All questions of the right to vote shall be heard and determined by the judges of election."

The spirit of both basic and statutory law is to encourage electors to exercise their right of franchise.

In discussing the question of students voting, *Corpus Juris*, Volume 20, page 72, says:

"A student in a college town is presumed not to have the right to vote in that town and the fact that he has resided there the necessary length of time does not of itself entitle him to vote in that town. The same rules, however, for determining residence apply to students as to other persons."

In *Welsh vs. Shumway*, 232 Ill., 53, it was held:

"A permanent residence to entitle one to vote is where the intended voter means to abide and become a citizen until duty, business, moral obligation, contract, resolution or convenience may compel him to elect a new home as his place of domicile."

Chief Justice Shaw, in the case of *Lyman vs. Fiske*, 17 Pick., 231, said, with reference to the determination of whether or not a change of residence had been effected:

"It is often a question of great difficulty, depending on minute and complicated circumstances leaving the question in so much doubt that a slight circumstance may turn the balance. In such a case the mere declaration of the party made in good faith of his election to make the one place rather than the other his home would be sufficient to turn the scale but it is a question of fact for the jury to be determined from all the circumstances of the case."

In *Grant vs. Jones*, 39 O. S., 506, it was held:

"The term 'residence' as used in constitutional and statutory provisions relating to the qualifications of electors, is synonymous with home or domicile."

Sections 5060 and 5061, General Code, governing challenging, read:

Sec. 5060. "Any voter may be challenged by any challenger, judge or clerk of elections, and, if challenged, shall establish his right to vote, as provided by law. Any elector of the precinct may notify the judges of elections in writing that he challenges the right of any person or persons to vote, giving the reason, and such person or persons shall be deemed challenged."

Sec. 5061. "If a person offering to vote is challenged as unqualified one of the judges shall tender him the following oath: 'You do swear or affirm that you will fully and truly answer all questions put to you, touching your place of residence and qualification as to an elector at this election.'

First—If the person is challenged as unqualified on the ground that he is not a citizen, the judges or one of them shall put the following questions:

1. Are you a citizen of the United States?
2. Are you a native or naturalized citizen?

If the person offering to vote claims to be a naturalized citizen of the United States, he shall, before the vote is received, produce for the inspection of the judges of election a certificate of the naturalization, and also under oath that he is the identical person named therein. The production of the certificate shall be dispensed with if the person offering to vote states under oath when and where he was naturalized, that he has had a certificate of his naturalization, and that, against his will, it is lost, destroyed or beyond his

power to produce to the judges of elections or if he states under oath that by reason of the naturalization of his parents or one of them, he has become a citizen of the United States, and when or where his parent or parents were naturalized, the certificate of naturalization need not be produced.

Second—If the person is challenged as unqualified on the ground that he has not resided in this state for one year immediately preceding the election, the judges or one of them shall put the following questions :

1. Have you resided in this state for one year immediately preceding this election?
2. Have you been absent from this state within the year immediately preceding this election? If yes, then—
3. When you left this state, did you leave for a temporary purpose with the design of returning, or for the purpose of remaining away?
4. Did you, while absent, look upon and regard this state as your home?
5. Did you, while absent, vote in any other state?

Third—If the person is challenged as unqualified on the ground that he is not a resident of the county or precinct where he offers to vote, the judges or one of them shall put the following questions :

1. Have you resided in this county for thirty days last past?
2. Have you resided in this precinct for twenty days last past?
3. When did you last come into this county?
4. When you came into this county, did you come for a temporary purpose merely, or for the purpose of making it your home?
5. Did you come into this county for the purpose of voting in this county?
6. Are you now an actual resident of this precinct?
7. Have you a family? If so, where does your family reside?

Fourth—If the person is challenged as unqualified on the ground that he is not twenty-one years of age, the judges or one of them shall put the following question :

Are you twenty-one years of age to the best of your knowledge and belief?

The judges of election or one of them shall put such other questions to the person challenged under respective heads herein designated, as may be necessary to test his qualifications as to an elector at the election."

It will be observed that no provision for an affidavit is made in either Sec. 5078-8 or Sec. 5061, supra. However, in the latter section definite questions are set forth, and the election judges are authorized to put the prospective voter under oath and to ask these, and such other questions as they deem necessary.

Perhaps you have in mind Section 4981, General Code, providing for an affidavit in case of challenge. This, it will be noted, applies only to primary elections.

In the absence of statutory authority therefor, the election authorities could not require an affidavit of a student as to his intention to remain in the county as a prerequisite to his voting at a general election.

In specific answer to your question, therefore, I am of the opinion that a college student possessing the qualifications of an elector prescribed in Sections 4862 and 4863, General Code, who asserts his intention to remain in the county in which the college is located, after he ceases to attend such college, cannot be compelled to make an affidavit to that effect, as a prerequisite to his voting at a general election. How-

ever, under Sections 5060 and 5061, General Code, he may be challenged either by a challenger or a judge of elections and examined under oath by the latter as to his residence qualifications.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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1143.

APPROVAL, BONDS OF CITY OF FOSTORIA, SENECA COUNTY—\$2,000.00.

COLUMBUS, OHIO, November 2, 1929.

*Industrial Commission of Ohio, Columbus, Ohio.*

1144.

APPROVAL, FINAL RESOLUTION COVERING EXTRA ON I. C. H. NO. 26,  
JEFFERSON COUNTY.

COLUMBUS, OHIO, November 4, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval Supplemental Final Resolution covering extra on I. C. H. No. 26, Jefferson County.

Finding said resolution proper as to form and legality, I have accordingly endorsed my approval thereon and return the same herewith to you.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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1145.

APPROVAL, FINAL RESOLUTION FOR PROPOSED ELIMINATION IN  
KNOX COUNTY.

COLUMBUS, OHIO, November 4, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a copy of Final Resolution of the Board of County Commissioners of Knox County with the certificate of the county auditor of Knox County with reference to the appropriation of the county's share of the cost for the proposed elimination, and also the certificate of John B. Bain,