

OPINION NO. 2002-025**Syllabus:**

1. No individual may have more than one voting residence at a time, and no individual may vote in more than one school district in a single election.
2. When a parcel of residential real property is divided by a school district boundary line so that parts of the parcel and parts of the house located on the parcel lie in two different school districts, and when the school districts have agreed to allow each child residing on the parcel to attend the schools of either district, then the county board of elections must determine, in accordance with Ohio election law, the school district in which persons who reside in the house are entitled to vote.

To: Stanley E. Flegm, Crawford County Prosecuting Attorney, Bucyrus, Ohio
By: Betty D. Montgomery, Attorney General, October 29, 2002

We have received your request for an opinion on a question concerning voting rights. The matter at issue is whether citizens may vote in more than one school district when the school district line intersects the parcel on which their house is located.

The relevant facts are as follows:

A new subdivision inside the City of Bucyrus has at least one side of the street intersected by the Wynford and Bucyrus School District line. The Crawford County Board of Elections has informed the Crawford County Prosecutor's Office that the school districts are allowing parents to decide which district their child or children will attend (*i.e.*, those homes that are intersected by the school district line) rather than moving the school district line. This decision by both school boards extends to allowing multi-child families to select either school district for each child, so that children from a single family may attend different school districts at the same time. This agreement further calls for the sharing of tax revenue collected in the affected parcels.

You have not inquired about the actions and agreement of the school boards, and this opinion does not address them.¹

¹For purposes of this opinion, we assume the lawfulness of this arrangement. *See generally*, e.g., R.C. 3313.64(B)(1); *Massie v. Lexington Local Sch. Bd. of Educ.*, No. 00-CA-101, 2001 Ohio App. LEXIS 3269 (Richland County July 3, 2001) (when school district boundary bisected resident's property, consisting of three parcels, the parent resided in the school district in which the parcel containing the house was located and the children were entitled to attend schools of that district only; the parent was registered to vote in that school

The materials you have provided indicate that the school district boundary line intersects the parcels in question in such a manner that the houses situated on each of the parcels are located in two different school districts. Your letter indicates that your office has informed the Crawford County Board of Elections that the owners of the affected lots have a right to vote on school issues in both the Wynford and Bucyrus School Districts. Your letter further indicates that an election official at the Secretary of State's Office has expressed the opinion that a parent cannot vote in both school districts irrespective of the tax situation or having a child attend each school district at the same time.

To address your question, let's begin by considering the right to vote. Section 1 of Article V of the Ohio Constitution grants the right to vote to "[e]very citizen of the United States, of the age of eighteen years, who has been a resident of the state, county, township, or ward, such time as may be provided by law, and has been registered to vote for thirty days." Ohio Const. art. V, § 1.² By statute, every citizen of the United States who is at least eighteen years old, has been a resident of the state for thirty days, "is a resident of the county and precinct in which the citizen offers to vote, and has been registered to vote for thirty days, has the qualifications of an elector and *may vote at all elections in the precinct in which the citizen resides.*" R.C. 3503.01 (emphasis added).³

A precinct is a district within a county established by the county board of elections; all qualified electors having a voting residence within the precinct may vote at the same polling place. R.C. 3501.01(Q). The county board of elections is given responsibility for establishing, defining, providing, rearranging, and combining election precincts, and also for providing the places for registration and elections. R.C. 3501.11(A) and (B). The board of elections may divide a political subdivision into precincts and establish, define, divide, rearrange, and combine election precincts, when necessary to maintain requirements as to the number of voters and "to provide for the convenience of the voters and the proper conduct of elections," but may not make changes in precinct boundaries during the twenty-five days immediately preceding a primary or general election. R.C. 3501.18(A). If school district boundaries are not identical to precincts, or if voters of only a part of a precinct are qualified to vote in an election, voters may be assigned to vote at a nearby precinct. R.C. 3503.01.

The board of elections is also given responsibility for investigating and determining the residence qualifications of electors. R.C. 3501.11(Q). R.C. 3503.02 sets forth various rules for registrars and judges of elections to use in determining a person's residence for voting purposes. Chief among them is this basic definition: "That place shall be considered the residence of a person in which the person's *habitation is fixed* and to which, whenever

district); *Baucher v. Bd. of Educ.*, 31 Ohio Misc. 49, 277 N.E.2d 92 (C.P. Mercer County 1971) (where family lived in two houses in two different school districts, the children were eligible to attend schools in either district; one parent had voted in each district); *In re Sugar Creek Local Sch. Dist.*, 21 Ohio Op. 2d 16, 19, 185 N.E.2d 809, 813 (C.P. Putnam County 1962); *see also Bd. of Educ. v. Day*, 30 Ohio Misc. 2d 25, 506 N.E.2d 1239 (C.P. Hardin County 1986); *Bd. of Educ. v. Dille*, 109 Ohio App. 344, 165 N.E.2d 807 (Montgomery County 1959); 1994 Op. Att'y Gen. No. 94-070, at 2-349 n.6.

²Persons who are mentally incompetent are not entitled to vote, and persons convicted of felonies may be denied the right by action of the General Assembly. Ohio Const. art. V, §§ 4 and 6. *See, e.g.*, R.C. 2961.01.

³Exceptions to residence time limits may be allowed in certain circumstances. *See, e.g.*, R.C. 3503.06; R.C. 3503.16(B)(2), (C), (D), (G); *see also* 42 U.S.C.A. § 1973gg-6(e)(2)(A) (West 1994).

the person is absent, the person has the *intention of returning.*" R.C. 3503.02(A) (emphasis added). Under this definition, residence for voting purposes requires both a fixed habitation and the intention to make that place one's residence. *See, e.g., Kyser v. Bd. of Elections*, 36 Ohio St. 2d 17, 303 N.E.2d 77 (1973); *Sturgeon v. Korte*, 34 Ohio St. 525, 534-35 (1878); *Esker v. McCoy*, 5 Ohio Dec. Reprint 573, 576 (C.P. Ross County 1878) ("[t]o be entitled to exercise the right of franchise in a certain precinct requires the concurrence of two things—the act of residing in connection with the intention to do so"); 1993 Op. Att'y Gen. No. 93-055; 1922 Op. Att'y Gen. No. 2817, vol. I, p. 32, at 34.

If a person has one home, that home is the person's voting residence. If a person has more than one home, the facts may support a voting residence in more than one location, and the individual's intent will be relevant to a determination of which of those locations is the residence for voting purposes. *See, e.g., State ex rel. Klink v. Eyrich*, 157 Ohio St. 338, 343-44, 105 N.E.2d 399, 401-02 (1952) (Taft, J., concurring); 1993 Op. Att'y Gen. No. 93-055, at 2-261 to 2-262. Although a person may have more than one residence for some purposes, it is firmly established that a voter may have only one residence for voting purposes. *See, e.g.,* 1993 Op. Att'y Gen. No. 93-055, at 2-262.⁴

Under Ohio law, it is a felony for a person to "[v]ote or attempt to vote more than once at the same election by any means." R.C. 3599.12(A)(2); *see also* R.C. 3599.12(B). Every polling place must display a notice that states: "Ohio law prohibits any person from voting or attempting to vote more than once at the same election. Violators are guilty of a felony of the fourth degree and shall be imprisoned and additionally may be fined in accordance with law." R.C. 3501.11(X).

Thus, it is clear that an individual is not permitted to vote in two different school districts in the same election. *See, e.g., State ex rel. Klink v. Eyrich*, 157 Ohio St. at 344, 105 N.E.2d at 402 (Taft, J., concurring) (recognizing that a particular individual may have a choice of more than one place as a voting residence and stating: "[o]bviously, such individual can vote only once at the same election. If he even tries to vote more than once at such election, he thereby violates the law"). We conclude, accordingly, that no individual may have more than one voting residence at a time, and no individual may vote in more than one school district in a single election.

This conclusion is not affected by an arrangement under which two school districts agree to share tax revenue from divided parcels and to allow families residing on such parcels to have children attending schools of both districts simultaneously. *See* notes 1 and 4, *supra*. The school districts do not possess the authority to expand voting rights beyond those granted by constitution and statute.

The fact that property taxes are shared by two different school districts does not create a right to vote in both school districts. The right to vote depends not on the ownership

⁴R.C. 3313.64(B)(1) provides that "[a] child shall be admitted to the schools of the school district in which the child's parent resides." *See also* R.C. 3313.64(J). *See generally, e.g.,* 1994 Op. Att'y Gen. No. 94-070. However, a determination of residence for school admission is not necessarily the same as a determination of residence for voting purposes. *See, e.g., In re Sugar Creek Local Sch. Dist.*, 21 Ohio Op. 2d 16, 19, 185 N.E.2d 809, 813 (C.P. Putnam County 1962) (mutual arrangement between school boards allowed children to attend without paying tuition; parents who resided outside the district voted illegally, thinking that if their children attended the district, they were residents of the district); 1922 Op. Att'y Gen. No. 2817, vol. I, p. 32.

of property or payment of taxes, but on residence in a particular location. See Ohio Const. art. V, § 1; R.C. 3503.01; R.C. 3503.02.

As discussed above, the board of elections is responsible for determining, in accordance with Ohio election law, the boundaries of various precincts and the residence of each elector. Ohio statutes do not specifically address the manner in which a board of elections should determine the voting residence of a person whose house is intersected by the school district boundary line, and that issue has not been definitively determined by Ohio courts.⁵

⁵*Kern v. Schwinke*, 19 Ohio Op. 299, 303 (C.P. Jackson County 1940), contains the following discussion of a situation in which premises were allegedly divided so that the garage and driveway were in a village and the boundary between the village and township ran along the foundation of the porch:

It is said in 20 C.J., 70,

“Where the line dividing two election districts runs through an elector’s home he is entitled to vote in the district in which the larger portion of his residence is situated.”

It is also said in a recent Kentucky case,

“In some jurisdictions, however, if the precinct line runs through a voter’s house, he may elect to vote in either precinct.”

Annotation, C.J. 1927-1932, Page 1346; 210 Ky., 642; 276 S. W. 152. The court feels, as to the voters [in question], that the contestor has not proved by a preponderance of the evidence that they are illegal voters [in the village].

C.J.S. now states:

Where the line dividing two election districts runs through an elector’s dwelling house, he is entitled to vote in the district in which the larger portion of his residence is situated. Where an elector’s land lies partly in one election district and partly in another, his voting residence is in the district in which that portion of the land on which he actually resides is situated.

29 C.J.S. *Elections* § 19e, at 75 (1965) (footnotes omitted). C.J.S. also states that, “[w]here ... boundary lines are not definitely known and there is a resultant doubt as to the precinct in which a person is entitled to vote, he may elect the precinct in which he will vote, but, having made his choice, he must adhere thereto.” 29 C.J.S. *Elections* § 199, at 555 (1965) (footnotes omitted); see also Restatement (Second) of Conflict of Laws § 18 cmt. h, at 75-76 (1971) (when the dwelling place is situated on a dividing line, “[u]sually, the domicile will be in that political division where the major portion of the dwelling place is located, particularly if only an uninhabitable part lies in the other.... When the boundary line cuts the dwelling place in half, or nearly so, primary weight should be given to the interests and activities of the person and his family and the domicile placed in the political division where most of these interests and activities are centered”). Courts in other jurisdictions have expressed various opinions with regard to determining voting residence when a house is located on the boundary line between districts. See, e.g., *In re Davy*, 120 N.Y.S. 2d 450, 452 (App. Div. 1952) (citing general rule that if house is divided by boundary line domicile rests in the locality where the main activities of a home are carried on and stating: “I doubt if the courts of this State would draw so fine a distinction and in the case of a dwelling house situated upon a boundary line between two election districts I have no doubt that the owner might successfully claim a voting residence in either district”); *Gray v. O’Banion*, 23 Cal.

We have been informed, as a practical matter, that, in instances of intersecting boundary lines, some boards of elections place a residence in the district in which the street address is located and others place it in the district in which the bedrooms are located.⁶ In the absence of clear authority on the issue, it appears that the board of elections may consider and apply relevant factors as it deems appropriate.

Both the designation of precincts and the determination of voting residence are left to the discretion of the board of elections. *See State ex rel. City of North Olmsted v. Cuyahoga County Bd. of Elections*, 93 Ohio St. 3d 529, 533, 757 N.E.2d 314, 317 (2001) (boards of elections are local authorities best equipped for determining compliance with election laws). These matters cannot be decided by means of an opinion of the Attorney General. *See, e.g.*, 2001 Op. Att'y Gen. No. 2001-032, at 2-193 ("[t]he Attorney General is not empowered, in rendering opinions, to exercise discretion on behalf of other public officials"); 2001 Op. Att'y Gen. No. 2001-026, at 2-144.

We conclude, accordingly, that when a parcel of residential real property is divided by a school district boundary line so that parts of the parcel and parts of the house located on the parcel lie in two different school districts, and when the school districts have agreed to allow each child residing on the parcel to attend the schools of either district, then the county board of elections must determine, in accordance with Ohio election law, the school district in which persons who reside in the house are entitled to vote.

Therefore, it is my opinion, and you are hereby advised, as follows:

1. No individual may have more than one voting residence at a time, and no individual may vote in more than one school district in a single election.
2. When a parcel of residential real property is divided by a school district boundary line so that parts of the parcel and parts of the house located on the parcel lie in two different school districts, and when the school districts have agreed to allow each child residing on the parcel to attend the schools of either district, then the county board of elections must determine, in accordance with Ohio election law, the

App. 468, 476, 138 P. 977, 980 (1913) (person whose residence was divided with dining room in the third district and other rooms in the fourth district had a legal right to vote in the fourth district only; "[h]e was, of course, mistaken in the assumption that he had the right to vote in either precinct at his election, or that he could vote alternately in the two"); *East Montpelier v. City of Barre*, 79 Vt. 542, 545, 66 A. 100, 100 (1907) (when house was divided diagonally by boundary line, legal status as a dwelling place was determined "by the location of that part of the structure most closely connected with the primary purposes of a dwelling"); *Chenery v. Waltham*, 62 Mass. 327 (1851); note 6, *infra*; *see also Hobbie v. Vance*, 292 Ala. 367, 294 So. 2d 743 (1974) (statute allows person whose place of residence is located partly in two or more precincts to select the precinct of residence). *See generally Baerst v. State Bd. of Educ.*, 34 Conn. App. 567, 642 A.2d 76 (1994).

⁶The bedroom rule is apparently derived from the common law, as expressed in *Abington v. North Bridgewater*, 40 Mass. 170, 179 (1839): "[I]f a man has a dwellinghouse, situated partly within one jurisdiction and partly in another, ... he shall be deemed an inhabitant within that jurisdiction, within the limits of which he usually sleeps." *See also Whitehouse v. Comm'r of Internal Revenue*, 963 F.2d 1 (1st Cir. 1992); *Blaine v. Murphy*, 265 F. 324 (D. Mass. 1920); 25 Am. Jur. 2d *Domicil* § 29 (1996).

school district in which persons who reside in the house are entitled to vote.