

## Opinion No. 54-5948

May 14, 1954

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Honorable W. C. Wheatley State Senator Clayton, New Mexico

{\*401} On April 29th you requested an opinion from this office as to whether a person living in one precinct and registered in another precinct can vote in the precinct where he is registered.

The qualification of an elector in this State are specified in Article 7, Section 1 of the New Mexico State Constitution, and in Section 56-248, N.M.S.A., 1941 Compilation, from which it appears that every citizen of the United States who is over the age of twenty-one (21) years and has resided in the State twelve (12) months, in the county ninety (90) days and in the precinct in which he offers to vote thirty (30) days, next preceding the election, with certain exceptions, is a qualified elector.

An examination of the statutes also reveals that Section 56-246, N.M.S.A., 1941 Compilation, provides that no person shall vote at any general, special, primary, or municipal election unless registered as provided by the Laws of the State of New Mexico, and unless otherwise qualified as herein provided. No ballot of any unregistered or otherwise unqualified person shall be cast, counted or canvassed. The provisions of this section shall be mandatory.

Section 56-247, N.M.S.A., 1941 Compilation, provides as follows:

"Any registered elector of the state of New Mexico may retain his residence for voting purposes in the county in which he is registered, during such time as he may be absent from such county. The registration of such person may be changed or stricken from the affidavits of registration only in the manner now or hereafter provided by law for change or registration or purging affidavits of registration. "Every qualified registered elector of the state of New Mexico may vote in the precinct or {\*402} election district, in which he is registered, and no judge of election or county judge shall refuse to count the ballot of such elector for the reason that he is not a resident of such precinct or election district.

"If the ballot of any registered elector be challenged for the reason that such elector is not a resident of such precinct or election district, such ballot shall be placed in a separate envelope, for that purpose, with the proper notation thereon, but said ballot shall be counted."

If a person is registered and has his domicile in said precinct he can vote in said precinct although he lives or resides in another precinct.

"Domicile" is defined in **Vol. 28, CJS at page 1**, as follows:

"Domicile is the legal conception of home, and the relation created by law between an individual and a particular locality or country. The term has been variously defined, the definitions agreeing substantially on the elements of a true fixed home, habitation, or abode, where a person intends to remain permanently or indefinitely, and to which, whenever absent, he intends to return."

"Residence" is defined in **Vol. 77 CJS at page 200** as follows:

"In a very broad sense, 'residence' is the name of a place or thing, and means the place where anything rests permanently. More frequently the word 'residence' is defined as meaning abode, dwelling, habitation, or place where one resides, actually lives, or has his home; the place of abode; the abode or dwelling place; a fixed or permanent abode or dwelling place for the time being, as distinguished from a mere temporary locality of existence; a settled or fixed abode of a character indicating permanency, or at least an intention to remain for an indefinite time."

It has been held in many states that the term 'residence' as used in constitutional or statutory provisions relating to the qualifications of electors, is synonymous with home or domicile, denoting a permanent place to which a party when absent intends to return. A sojourn in the place however long without the intention of making it a permanent home, will not qualify the sojourner as an elector. One must have a residence somewhere and when once established, that residence is presumed to continue until a new one is established. Neither may one have more than one legal residence at one time.

It has been held that one cannot by intention alone fix his dwelling place. The word means not only intention to reside in a fixed place, but also personal presence in that place coupled with conduct indicative of such intention. See **20 CJS 68, Section 26**.

In the case of **Berry vs. Hull, reported in 6 N.M. at page 643**, a case involving a contest of election, and in affirming the case the Court held:

"\* \* \* that a person formerly residing in this territory does not forfeit his right to vote by absence from the territory for the time specified in Section 1214, Compiled Laws, providing that a citizen to be entitled to vote must be a resident of the territory, county and precinct for a certain time 'immediately preceding the election,' unless it be shown it was his intention to change his residence; the mere {\*403} fact of his being out of the territory with a camping outfit was not sufficient to show such intention."

It is therefore the opinion of this office that a person registered in a precinct can vote in that precinct if he has his domicile in said precinct, even though he is residing and living in another precinct.

We trust that this answers your inquiry.

By: Hilario Rubio

Assist. Attorney General