

Opinion No. 54-6018

September 16, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Arthur T. Noble, Jr. District Attorney Eighth Judicial District Taos, New Mexico

{*480} In your letter dated August 27, 1954, you state that the unincorporated {*481} community of Red River is contemplating incorporating as a village. Under Section 14-401 in order to initiate proceedings, a petition may be presented to the Board of County Commissioners, signed by not less than a majority of the owners of real estate, proposed to be included within the incorporated village, who have paid a real estate property tax thereof for the previous year and who reside within such territory. You state that the majority of the residents of Red River, although they may own real estate and pay real estate property taxes, are merely Summer residents and only spend about three months of the year in Red River after which they return to their home states. You inquire whether such Summer residents who are otherwise qualified, may legally sign the petition for incorporation.

The matter of residence is one of intent as well as of fact to be determined in each case. The question of residence was discussed in the case of **Allen vs. Allen**, 52 N.M. 174, in connection with the residence requirements for divorces where this language was used:

"The statutory terms 'resident or residence' as used in divorce statutes, contemplate, as we think, an actual residence with substantially the same attributes as are intended when the term 'domicile' is used. They do not mean the place where the defendant in fact resides for the time being. They mean a residence of a permanent and fixed character, a domicile."

It is our opinion that in using the word "reside" in Section 14-401 of the 1941 Compilation, the Legislature intended that the persons signing the petition for incorporation should be domiciled in the community involved and not claim some other state as their residence. Summer residents, although they may own real estate and pay real estate property taxes who claim some other state as their domicile or legal residence, would not be eligible to sign such petition.

By: C. C. McCulloh

Assist. Attorney General