

## Opinion No. 58-60

March 25, 1958

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Hilton A. Dickson, Jr.,  
Assistant Attorney General

**TO:** Senator Tibo J. Chavez, Belen, New Mexico

### QUESTION

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Once you have established voting residence within the municipality, do you lose that voting residence by the mere fact that you are living outside the municipality, although you have never changed your residence outside the municipality?

#### CONCLUSION

Yes.

### OPINION

#### ANALYSIS

Under the provisions of § 3-1-1, as amended 1947, a person's residence for purposes of voting is defined as follows:

"Residence within the meaning of the above paragraph shall be residence upon land privately owned, or owned by the state of New Mexico, any county or municipalities thereof; or upon lands originally belonging to the United States of America or ceded to the United States of America by the state of New Mexico, any county thereof, or any municipal corporation or private individual, by purchase, treaty or otherwise."

And considering particularly the qualification requirements for voters in municipal elections, § 14-14-3 provides in part:

". . . and whenever the corporation is divided into wards, there shall be one (1) such place (voting) in each ward **or precinct**, and any person who, at the time of any election of municipal officers, would be a qualified elector under the laws of the state, for county officers, and shall have actually resided in the ward, in which he offers to vote, for thirty (30) days last preceding the election, shall be deemed a qualified voter, . . ." (Emphasis ours).

Attorney General's Opinion, dated August 14, 1930, gave consideration to the meaning of residence as provided by Article VII, Section 1, pointing out that:

"It has been held in many states that the term 'residence' as used in the constitutional and statutory provisions relating to the qualifications of electors is synonymous with home or domicile, denoting a permanent dwelling place to which a party when absent intends to return."

and further, Attorney General's Opinion No. 3474, dated March 12, 1940, held:

"In the first place, before anyone can vote in a municipal election the official registration affidavit of the voter must **show on its face** that he is a resident within the limits of the municipal corporation. Section 24, Chapter 152, Laws of 1939.

Unless the affidavit so shows on its face such a voter cannot vote at a municipal election in any event.

Further answering your inquiries, please be informed that the mere fact that a person temporarily removes himself from the limits of the municipal corporation does not deprive him of the right to vote in municipal elections especially if he has moved back into the municipality and is living there at the time of the election. Of course, residence is a matter of intention, and intention is an abstract thing of the mind that can be gathered only from a person's declarations, acts, conduct, etc."

Finally, in keeping with the penalty provision compiled as § 3-2-44, it is our opinion that a person, whose residence, as herein considered, is actually outside the exterior limits or boundaries of a municipality, is not qualified to vote in municipal elections.