

Opinion No. 13-1068

July 3, 1913

BY: FRANK W. CLANCY, Attorney General

TO: Mr. C. O. Thompson, Secretary of Local Option Committee, Roswell, N. M.

ELECTIONS.

Qualifications of voters as provided by Sec. 1703, Compiled Laws, 1897.

OPINION

{*239} I have just received your letter of the first instant asking my opinion as to legal voters and their qualifications as provided by Section 1703 of the Compiled Laws of 1897.

It is my opinion that that section is entirely superseded by the constitutional provision on the same subject to which you make reference in your letter, to be found in Section 1 of Article VII. The effect of the constitutional provision is to increase the requirement of residence in the state from six months to twelve months, leaving the residence in the county and in the precinct substantially the same, the statute providing for three months residence in the county and the constitution ninety days.

You next ask what is actually necessary to constitute residence so as to qualify a voter within the terms of the law relative to residence. It is quite impossible to state any comprehensive and accurate definition of what constitutes such residence so as to be applicable to all possible cases. Residence is largely a matter of intention, but a mere declaration of intention on the part of the citizen would not be sufficient evidence if inconsistent with the facts and his actions. A man may be physically absent from his place of residence without {*240} losing his rights as a resident of that place. For instance, the state officers of New Mexico mentioned in the constitution, are required during their terms of office to reside at the state capital, and there might be cases where circumstances are such that the state officer would retain no place of abode in the county of which he has been a resident and voter, and yet he ought not to be held to lose his right to vote in that county if he desired and intended there to retain his legal residence for voting purposes. There are thousands of persons employed in the federal government offices at Washington who go home to the different states from which they may have come, for voting purposes at elections although in many cases they have their actual residence and home in Washington and have no place of abode, and have not had for years, in the state where they vote.

You ask more particularly whether a person who is employed outside of a city and who has no established home therein, can acquire a residence so as to entitle him to vote at a municipal election on the prohibition question by merely taking lodging temporarily,

stopping over night for a few days at a rooming house or hotel within the city. Under the facts as stated in your question I have no hesitation in saying that stopping temporarily for a few days in a city could have no effect whatever upon the question of the man's residence, unless it were under such circumstances as to be corroborative of his continued intention to retain and claim a residence in the city of which he had at some earlier period been an actual resident and voter. You can see that it is a little dangerous and uncertain to answer such questions positively without full information as to all the surrounding circumstances.

You also ask if a man who is engaged in business outside of a city, living with his family at such place, can claim a residence in another city so as legally to entitle him to vote at an election where the question of prohibition is submitted. As stated in your question it would not seem possible that he could consistently with the facts claim a residence in such other city so as to entitle him to vote at any election in that city.

You also inquire in substance as to what is the penalty if any disqualified persons register as voters. In such an election as the one about which you inquire, it is plain that there can be no registration as the election is to be held not less than one month nor more than two months after the filing of the petition, and there would not be time for any registration to be had as provided by Section 1702 of the Compiled Laws of 1897, and we must hold that the Legislature did not intend to require such registration. If any disqualified person should vote or offer to vote at such an election, he would be punishable under the provisions of Section 10 of Chapter 105 of the Laws of 1909.

Your last question is whether at such an election the elector in order to vote must have resided within the state for a year or for only six months, which is covered by what I have already written as I am quite sure that the constitution fully supersedes the earlier statutory provision.