

Opinion No. 37-1523

February 8, 1937

BY: FRANK H. PATTON, Attorney General

TO: Honorable H. R. Rodgers Superintendent of Public Instruction Santa Fe, New Mexico

{*49} This is to acknowledge receipt of your letter of even date in which you request us to answer the inquiry of Irvin P. Murphy which is as follows:

"NEED OPINION STOP JOHN AND MISS DOE LIVED IN THIS DISTRICT SEVERAL YEARS JOHN HAS BEEN OUT OF DISTRICT EIGHTEEN MONTHS AND DAUGHTER THREE MONTHS FARMING AND GETTING WORK IN NEIGHBORING DISTRICT BUT TRADE HERE AND CLAIM THIS AS LEGAL RESIDENCE AND PLAN TO RETURN TO HOME PLACE SOON STOP BOTH VOTED HERE IN NATIONAL ELECTION NEITHER HAVE VOTED ELSEWHERE STOP CAN THEY VOTE IN SCHOOL BOARD ELECTION TUESDAY STOP"

The qualifications for voters in a municipal school election are set out in Section 2 of Chapter 2 of the Laws of 1933 which reads as follows:

"On the second Tuesday of February in each odd numbered year, the qualified electors of the district and the territory attached thereto for school purposes shall elect at large one or two members of said board as the case may be (except as provided in the section next preceding) to succeed those now holding office whose terms expire. Said elections shall be held, conducted, returned and canvassed as in cases of election of officers in the respective incorporated cities, towns and villages, except that no registration shall be required."

In determining who is a qualified elector as set out in the section above quoted, we must consider the definitions set out in our Constitution and other statutory provisions. Article VII, Section 1 of the Constitution is pertinent to this question. It provides in substance that every male citizen over the age of twenty-one years who has resided in New Mexico twelve months, in the county ninety days and the precinct thirty days, is qualified to vote.

Residence is an elastic term and is largely a matter of intention. See *Klutts vs. Jones*, 21 N.M. 720. It is likewise defined in Section 1 of Chapter 147 of the Laws of 1935 as follows:

"A person's residence is his fixed habitation to which when absent he intends to return."

I wish to refer you to Attorney General's Opinion No. 489 in which a situation similar to this was ruled upon by this office. It was there ruled that temporary absence from the

county to which the elector intended to return did not destroy residence. In that case, however, the departure was of shorter duration than that set out in your inquiry.

Your attention is also called to Attorney General's Opinion No. 969 which touches upon this proposition. It was there held that while the mere fact a person left the county did not destroy residence, a definite removal did. No definite criterion or rationale can be established. As stated above, it is largely a matter of intention which must be considered with attendant facts and circumstances. In the situation you have outlined, I am of the opinion that the doubt should be cast in favor of the person seeking to vote.

Every case must be decided on its own facts and this opinion should not be construed as holding that in any given circumstances a person {50} may live in one place and claim residence in another.

By: RICHARD E. MANSON,

Asst. Atty. Gen.