

September 2, 2014

City of Lewisburg Tennessee
Mr. Randall D. Dunn
City Manager
131 East Church Street
Lewisburg, Tennessee 37091

VIA ELECTRONIC MAIL

Dear Mr. Dunn:

You have asked what constitutes “residency” as it relates to a member of the governing body. To that end, the advice of Legal Consultant Melissa Ashburn was sought.

You will find enclosed a memorandum on the topic that will provide general guidance on the question. However, please be advised that the intent of the person is controlling in this situation. Accordingly, if it is the intent of the person for his home to be his residence - even if he spends every night at some other location inside or outside of the city – then his home remains his place of residence under the election laws. According to Ms. Ashburn, where a person physically lays his head at night has very little bearing on residency. Ms. Ashburn further notes that the list in TCA 2-2-122(b)(1) are merely factors to consider in determining residency. A copy of the statute is enclosed for ease of reference.

Finally, please be advised that each reported court case on the issue is based on specific facts that cannot provide guidance, as it is a “totality of the circumstances” review, and no one fact or fact pattern gives the answer.

Please let me know if you have any questions or require any additional assistance on this matter.

Very truly yours,



Jeffrey J. Broughton
Municipal Management Consultant

Cc: Melissa Ashburn

MEMORANDUM

Vacancy caused by elected official moving outside city limits

The general law, at Title 8, Chapter 48 of the Tennessee Code “Vacancies in Office,” provides that moving outside the area which you are elected to represent results in a vacancy in office:

Any office in this state is vacated by:

- (1) The death of the incumbent;
- (2) The incumbent's resignation, when permitted by law;
- (3) *Ceasing to be a resident of the state, or of the district, circuit, or county for which the incumbent was elected or appointed;* Tenn. Code Ann. § 8-48-101 (West) (emphasis added)

Although the above italicized language does not mention “city” or city limits, the Tennessee Attorney General has opined that this law does apply to municipal officials.

Municipal officers have a statutory continuing residency requirement imposed upon them by virtue of Tenn. Code Ann. § 8–48–101(3), stating that “[a]ny office in this state is vacated by [c]easing to be a resident of the state, or of the district, circuit or county for which the incumbent was elected or appointed[.]” In determining whether any position constitutes an “office” and is thereby subject to Tenn. Code Ann. § 8–48–101(3), one determines whether the position is occupied by a “public officer.” Tennessee courts have set forth the following general definition:

*4 “Public officer” has been defined as an incumbent of a public office; an individual who has been appointed or elected in a manner prescribed by law, who has a designation or a title given him by law, and who exercises the functions concerning the public assigned to him by law. *Sitton v. Fulton*, 566 S.W.2d 887, 889 (Tenn.1978)

.....Although the distinctions between employees and officers are not always clear, the positions at issue appear to be “offices” and, accordingly, **would be deemed vacant if the serving official did not reside in the municipality.** Tenn. Code Ann. § 8–48–101(3). **It follows then that the official must reside in the city where the office is held.** Tenn. Op. Att’y Gen. No. 99-075 (Apr. 5, 1999) (emphasis added)

Under our general laws, a municipal official who moves outside the city limits automatically vacates their office. The governing body still has to declare a vacancy exists in a public meeting before the office may be filled by appointment.

“Residency” means an intent to live at another location, not to temporarily visit and stay at a different house. A person’s ability to register to vote, or to qualify as a voter in any location is

determined by that person's residency. Although the term "residency" seems simple enough, the election code lays out a rather long list of factors to consider when determining if a person resides in the area in which they wish to register to vote. Following is the entire election law section on how residency is determined in Tennessee:

(a) The determination of whether a person is a resident or where the person resides or has residence for purposes of the election code shall be made in the light of the following principles:

(1) The residence of a person is that place in which the person's habitation is fixed, and to which, whenever the person is absent, the person has a definite intention to return; provided, that a person may not register to vote using a business location as the registration address when the sole basis for the person's presence at such location is based on a business or commercial use;

(2) A change of residence is generally made only by the act of removal joined with the intent to remain in another place. There can be only one (1) residence;

(3) A person does not become a resident of a place solely by intending to make it the person's residence. There must be appropriate action consistent with the intention;

(4) A person does not lose residence if, with the definite intention of returning, the person leaves home and goes to another country, state or place within this state for temporary purposes, even if of one or more years duration;

(5) The place where a married person's spouse and family have their habitation is presumed to be the person's place of residence, but a married person who takes up or continues abode with the intention of remaining at a place other than where the person's family resides is a resident where the person abides;

(6) A person may be a resident of a place regardless of the nature of the person's habitation, whether house or apartment, mobile home or public institution, owned or rented; however, a commercial address may not be used for residential purposes, unless the applicant provides evidence of such applicant's residential use of such address;

(7) A person does not gain or lose residence solely by reason of the person's presence or absence while employed in the service of the United States or of this state, or while a student at an institution of learning, or while kept in an institution at public expense, or while confined in a public prison or while living on a military reservation; and

(8) No member of the armed forces of the United States, or such member's spouse or dependent, is a resident of this state solely by reason of being stationed in this state.

(b)(1) The following factors, among other relevant matters, may be considered in the determination of where a person is a resident:

(A) The person's possession, acquisition or surrender of inhabitable property;

(B) Location of the person's occupation;

(C) Place of licensing or registration of the person's personal property;

(D) Place of payment of taxes which are governed by residence;

(E) Purpose of the person's presence in a particular place; and

(F) Place of the person's licensing for activities such as driving.

(2) In determining the residency of a person involuntarily confined in a state institution, the mere anticipation of a future grant of living quarters in a specific half-way house shall not be sufficient to establish intent to reside in such half-way house following release from the institution.

(c)(1) Notwithstanding any other provision in this chapter to the contrary, whenever county boundary lines cross through a farm being operated as a single unit, leaving such farm in two (2) separate counties, persons residing on such farms may make a one-time election to register to vote in either county. The administrator of elections shall place a person who chooses to register in the county which adjoins the physical location of the person's residence in the precinct where the property in the adjoining county is located.

(2) For the purpose of this subsection (c), "farm" means a tract of land of at least fifteen (15) acres constituting a farm unit engaged in the production of growing crops, plants, animals, nursery or floral products. Such farm shall produce gross agricultural income averaging at least one thousand five hundred dollars (\$1,500) per year over a three-year period.

(d)(1) Notwithstanding any other provision in this chapter to the contrary, a person shall be eligible to register to vote in the county where the person pays property taxes on the person's primary residence even though the property is partially or totally located in another county, but the only access to the property is through the county where the person pays property taxes. Any person residing at such property shall make a one-time election to register to vote in either the county where the property taxes are paid or the county where the property is located.

(2) The county election commission may require the person to provide written documentation that the person pays property tax in the county if a person chooses to register in the county where the property taxes are paid. Tenn. Code Ann. § 2-2-122.

Each situation in which an official's residency is challenged must be considered carefully using the above list as guidance. Deciding to declare a seat vacant because an official has moved his residence will likely result in litigation, unless the official agrees to resign from office, as the person's intent is the truly deciding factor in such cases. Our general laws require that elected officials reside in the area they are elected to represent. The absence of any such requirement in the city Charter does not negate this general law requirement.

West's Tennessee Code Annotated

Title 2. Elections

Chapter 2. Voter Registration

Part 1. Registration by Election Commissions

T. C. A. § 2-2-122

§ 2-2-122. Residence

Effective: May 19, 2008

Currentness

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Credits

1972 Pub.Acts, c. 740, § 1; 1973 Pub.Acts, c. 327, § 3; 1989 Pub.Acts, c. 590, § 11; 1994 Pub.Acts, c. 859, § 13, eff. June 1, 1994; 1994 Pub.Acts, c. 919, § 19, eff. April 15, 1994; 2005 Pub.Acts, c. 163, §§ 1, 2, eff. July 1, 2005; 2008 Pub.Acts, c. 939, § 1, eff. May 19, 2008.

Formerly § 2-222.

[Notes of Decisions \(14\)](#)

T. C. A. § 2-2-122, TN ST § 2-2-122
Current through end of the 2014 Second Reg. Sess.

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