

N.D.A.G. Letter to Torkelson (June 30, 1986)

June 30, 1986

Mr. Merle A. Torkelson
McLean County State's Attorney
P.O. Box 86
Washburn, ND 58577

Dear Mr. Torkelson:

Thank you for your letter of June 2, 1986, regarding voter residency. The question of one's voting residency is a difficult issue to resolve as questions of one's residence are questions of fact rather than law. The specific facts of each case must be examined to resolve the issue of residency. However, some general statements of law can be presented.

Our Supreme Court, in Dietz v. City of Medora, 333 N.W.2d 702, 705 (N.D. 1983), acknowledged that a person may have two or more actual residences as distinguished from the individual's single legal residence. The Court noted that there is a legal presumption against a change of legal residence or domicile. There are three elements that must be proved in order to show that a legal residence has changed:

1. Abandonment of the old domicile;
2. Actual removal to a new domicile;
3. Intent to change from the old to the new and to remain at the new domicile.

All of the facts and circumstances in the life of an individual may be used when considering the factual issue of whether or not there has been a change of legal residence. See 25 Am.Jur.2d Domicile §§92-100 (1966); 25 Am.Jur.2d Elections §66-78 (1966). The Court in Dietz examined such facts as an address listed on a will, checks, income tax forms, passport, driver's license, car registration, and life insurance policy. Moreover, the Court reviewed other facts including membership in clubs and churches, business activities, home ownership, location of personal possessions, where mail is received, and ownership of cemetery plots.

In answer to your first question, a person may still be a qualified voter of a precinct even if the individual no longer resides in the precinct. Clearly, physical presence in the precinct is not required. N.D. Const. Art. II, §1. Moreover, a residence cannot be lost until another is gained and a residence can be changed only by the union of act and intent. N.D.C.C. §54-01-26.

In answer to your second question, a person may still be a qualified voter in their old precinct even though the individual may be qualified to vote in the new precinct in which they currently reside. The law recognizes the fact that an individual may have more than one residence. However, a person has only one legal residence and there is a presumption against a change in legal residence. Dietz v. City of Medora.

Furthermore, the authority of an election board to challenge a voter is limited. If the eligibility of a voter is challenged by a member of the election board, the voter shall not be allowed to vote unless he or she completes an affidavit of eligibility to vote. Once the affidavit is completed, an individual who wishes to vote may not be prevented from doing so. Voter fraud is prosecuted after the election. See N.D.C.C. §16.1-05-06(1).

Sincerely,

Nicholas J. Spaeth

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