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6 IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

7 The State of Arizona, by and through
Yavapai County Attorney, Sheila Polk,

8 Plaintiff,

9 v.

10 Kirk Leopold, et al.

Defendants.

11 Bob Summers, in his official capacity as a
member of the Board of Directors of the
12 Inscription Canyon Ranch Sanitary District,

13 Real Party in Interest.

No. P1300CV201900816

**PLAINTIFF'S REPLY TO
DEFENDANTS' RESPONSE TO
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

(Expedited Ruling Requested)

Assigned to: Hon. David L. Mackey

14 Plaintiff, State of Arizona, by and through Yavapai County Attorney, Sheila Polk,
15 and her undersigned deputies, hereby files its Reply to Defendants' Response to Plaintiff's
16 Motion for Summary Judgment. This Reply is supported by the following Memorandum of
17 Points and Authorities.

18 **Memorandum of Points and Authorities**

19 Defendants can only justify their position by attacking Alan Poskanzer's
20 ("Poskanzer") registration at Precinct Part 244.01 – Bison in Prescott Valley ("Bison
21 Precinct"). (First and Second Joint Factual Stipulations and Stipulated Exhibits (collectively

1 “JSOF”) ¶¶ 20-23.) Defendants fail to show by clear and convincing evidence that
2 Poskanzer was not a qualified elector who was validly registered at 4816 N. Salem Place,
3 Prescott, Valley, Arizona 86314 (the “Prescott Valley Property”) in the Bison Precinct
4 pursuant to A.R.S. § 16-101. Defendants instead imply that Poskanzer engaged in
5 potentially felonious false registration and voting. Defendants’ Response to Plaintiff’s
6 Motion for Summary Judgment (“DRMSJ”) alleges three errors in Plaintiff’s arguments
7 which are addressed below. (DRMSJ at 1–2.)

8 **I. Poskanzer’s one residence was at the Prescott Valley Property’s address.**

9 Defendants’ first contention of error misconstrues the State’s point that the second
10 sentence of A.R.S. § 16-101(B) refers to temporary absence from the voter’s residence, not
11 the larger political subdivision. That statute states that “[a] temporary absence does not
12 result in a loss of residence if the individual has an intent to return following his absence.”
13 Defendants argue that the “plain meaning” of the first sentence of the statute justifies
14 substituting “political subdivision” for “residence” in the second sentence.

15 However, “residence” refers to a specific dwelling and not an entire “political
16 subdivision” or “the “District.” Throughout A.R.S. Title 16, “residence” consistently
17 denotes a specific identifiable and addressable location such as a home.¹ Reading any of the

18 ¹ For example, the term “**residence address**” is used by A.R.S. §§ 16-121.01(A); 16-311(A
19 & B); 16-315(A)(4)(c) & (B)(4); 16-135(A, B, E & E(2)); 16-152(A(3) A(4), D); 16-166(B
& E); 16-168(B & C(4)); 16-321(E); 16-544(B & (D(2)); 16-584(C); and 16-803(B)(2)(b).
20 A “residence address” is “within the precinct” in A.R.S. §§ 16-135(B) & 16-584(C).
21 Precinct registers and lists shall contain an elector’s “residence address” A.R.S. §§ 16-
168(B), 16-168(C)(4). Petition circulators shall verify qualified electors signing petitions
reside at the “address given as the signer’s residence.” A.R.S. § 16-321(D). When obtaining
a ballot, a qualified elector shall announce the elector’s name and “place of residence”

1 statutes in Title 16 with “District” or “political subdivision” substituted for “residence”
2 would render those statutes nonsensical. The plain language of “residence” as used in the
3 election statutes defeats Defendants’ position. *See, e.g. Adrian E. v. Dep’t of Child Safety*,
4 239 Ariz. 240, 242 ¶ 9 (App. 2016) (“We also read . . . statutes in conjunction with each
5 other and harmonize them whenever possible.”) (alteration in *Adrian E.*) (citation omitted)).

6 Thus, the later “temporary absence” portion of A.R.S. § 16-101(B) focuses on a
7 return to the more limited “residence,” and not a return to another location in a political
8 subdivision as a whole. Moreover, A.R.S. § 16-101(B) says a voter may only have one
9 “residence” for purposes of Title 16. Again, “residence” cannot mean “political
10 subdivision” because a voter’s home can simultaneously be in many political subdivisions
11 such as a fire district, school district, library district, municipality, county, etc.

12 As such, Poskanzer cannot “return” to 14775 Agave Meadow Way, Prescott, Arizona
13 86305 (the “Agave Meadow Way Property”) because he has no right to live there and never
14 lived there, and he cannot “return” to 6575 Leaning Bear Trail, Prescott, Arizona 86305 (the
15 “Leaning Bear Trail Property”) because he sold it. The only place Poskanzer can return to
16 is a residence is the Prescott Valley Property where he properly registered to vote. Poskanzer
17 vacated his Board seat when he lawfully registered to vote twice at the Prescott Valley

18 _____
19 A.R.S. § 16-579(A). Early ballots are mailed to the “elector’s residence.” A.R.S. § 16-
20 542(E). Registrations may be cancelled upon report of a State resident’s death which shall
21 include the “decedent’s usual legal residence” A.R.S. §16-165(D). Individuals lacking a
“fixed, regular and adequate nighttime residence” may register at a homeless shelter. A.R.S.
§ 16-121(D). Voter registration forms shall contain “the complete address of the registrant’s
actual place of residence, including street name and number, apartment or space number,
city or town and zip code...” A.R.S. § 16-152(A)(3). “‘Household’ member means a person
who resides at the same residence as the voter.” 16-1005(I)(2)(d).

1 Property. (JSOF ¶¶ 20-21.) He further evidenced his vacancy when he voted in the Bison
2 Precinct outside the District. (JSOF ¶¶ 22-23.) Defendants cite no authority authorizing a
3 person who is a board member of one district, by virtue of his being a qualified elector there,
4 to simultaneously be a qualified elector and voter of another district. Instead they rely on
5 discussions of domicile, especially as it relates to divorce and probate proceedings and
6 various summary sections of the C.J.S., which cite non-Arizona cases and do not uniformly
7 support the propositions Defendants claim. Copies of 29 C.J.S. Elections §§ 38-41 are
8 attached hereto for the Court’s convenience.

9 If Poskanzer’s actions of registering to vote (twice) and voting at the Bison Precinct
10 in Prescott Valley are not evidence that he vacated his Board seat, then Arizona’s voting
11 system would be open to self-serving manipulations and the number of undesirable events
12 which will ostensibly result from this interpretation would undermine the entire voting
13 system in Arizona. For example, under Defendants’ interpretation, a Prescott City Council
14 member would be able to “temporarily” move to the town of Prescott Valley and register
15 and vote for a Prescott Valley Town Council candidate sympathetic to the Prescott City
16 Council while simultaneously retaining his Prescott City Council seat so long as he has an
17 intent to return to Prescott at some indefinite time in the future.

18 **II. Poskanzer’s registration and voting at the Prescott Valley Property are**
19 **strong evidence of his residency.**

20 Defendants’ second contention of error is that Poskanzer’s registration and voting at
21 the Prescott Valley Property were not “dispositive of his residency.” (DRMSJ at 1-2.)
Clearly voter registration does not conclusively establish residence, if, for example, there is

1 registration fraud. However, “**registration and voting are profoundly powerful evidence**
2 **of a voter’s residence for election and voting purposes.**” *Kauzlarich v. Board of Trustees*,
3 78 Ariz. 267, 270-71 (1955) (emphasis added). The simple, common sense concept that
4 Defendants cannot overcome is that Poskanzer’s acts of moving, registering to vote, and
5 voting outside the District are powerful evidence that Poskanzer moved his residence to the
6 Prescott Valley Property. Poskanzer meets all the requirements of A.R.S. § 16-101 for
7 registration at the Prescott Valley Property. That registration is presumed lawful and that
8 presumption “may be rebutted only by clear and convincing evidence.” A.R.S. § 16-
9 121.01(A). Defendants instead imply that the Court should find falsification or fraud with
10 the Prescott Valley Property registration without any such evidence to support this premise.

11 Defendants would like the Court to depart from the plain language of A.R.S. § 16-
12 101(B), which, in part, states: “For purposes of this title, “resident” means an individual
13 who has actual physical presence in this state, or for purposes of a political subdivision
14 actual physical presence in the political subdivision, combined with an intent to remain.”
15 Defendants would like the Court to insert the term “indefinitely” after “an intent to remain”
16 and interpret “indefinitely” as permanently rather than an unspecified period of time.
17 Defendants cite *Houghton v. Piper Aircraft Corp.*, 112 Ariz. 365, 367 (1975) for this
18 assertion. That case is a minimum contacts/long-arm jurisdiction domicile case. It found
19 that an overnight stop in Phoenix to rest and refuel when moving from New York to
20 California did not constitute sufficient “presence” in the state to establish Arizona as their
21 domicile. *Id.* It is marginally applicable to voter registration or the facts presented in this

1 case.

2 Interestingly, the only time the word “indefinite” appears anywhere in A.R.S. Title
3 16 is in A.R.S. 16-593(6) which reads:

4 If a person removes to another state with the intention of remaining there for an
5 **indefinite** time, and of making the place his **present** residence, he loses his
6 residence in this state, even though he has an intention of returning at some future
7 period.

8 (emphasis added). The statute is analogous to the situation at hand and does not require an
9 intent to indefinitely or permanently remain. Instead it reinforces the fact that Poskanzer
10 lost his residence in the District when he moved from the District to the Prescott Valley
11 Property with the intention of remaining there for an indefinite time and making the place
12 his present residence, even though he has an intention to move back to the District at some
13 future period.

14 Defendants claim Poskanzer was only temporarily absent from the District, which
15 they incorrectly argue allows Poskanzer to keep his residency in the District. But Poskanzer
16 plainly intended to remain at the Prescott Valley Property as evidenced by his signing a
17 lease there, moving there, registering to vote online in September 2018 and then again
18 through a handwritten paper form in October 2018, and voting in the November 2018
19 election based upon the Prescott Valley Property address. (JSOF ¶¶ 13–15, 20–23 & Ex. B.)
20 Poskanzer’s intent to remain at the Prescott Valley Property is obvious by those affirmative
21 actions and has not been convincingly rebutted by Defendants.

22 Defendants’ position would require that Poskanzer call the Prescott Valley Property
23 his “permanent” or “forever home” in order for the Board to make a determination that he

1 vacated the District. No authority supports this position. Under Defendants’ theory, no one
2 could ever plan a future move without risking losing being a qualified voter. Following
3 Defendants’ logic Poskanzer should not have been a qualified elector in the District when
4 he owned and lived at the Leaning Bear Trail Property (JSOF ¶¶ 6-7 & Ex. E) because such
5 occupancy was “temporary” as indicted by his eventual sale of the property. By Defendants’
6 logic, one would have to live at a particular residence, or at least political subdivision, from
7 cradle to grave without future plans to move or risk loss of voter qualification—no
8 downsizing a home in retirement, no moving from a starter home to a bigger home, no
9 renting, etc.

10 Defendants also cite to 29 C.J.S. Elections § 41 to support their temporary absence
11 claims. Defendants omit the notion contained therein that states: “while statements or
12 declarations with respect to the temporary nature of an absence from the voter’s place of
13 residence are not controlling, **a written notice of a change of address given to election**
14 **officials is sufficient to rebut the presumption that a voter continues to reside in a**
15 **district where the voter previously registered.”** (emphasis added) (citation omitted). One
16 of the cases cited for this assertion is *Cissna v. Stout*, 931 P.2d 363, 368-369 (Alaska 1996).
17 While the facts and law are distinguishable, the court’s critique of similar reasoning is on-
18 point:

19 Taken to its logical extreme, Cissna's interpretation allows someone who
20 lived in a district for two months, but moved from that district to a permanent
21 residence in another district twenty years ago, to vote in the election district
in which he or she resided two decades earlier.

Id.

1 Defendants' additional reliance on Ariz. Op. Atty Gen. No. I79-261 (October 19,
2 1979) for their position is tenuous. In that opinion, the school board member at issue never
3 registered or voted in another district. At the time of the opinion, A.R.S. § 16-101 did not
4 contain subpart (B), so the opinion did not consider the "intent to return to residence"
5 language or the "only one residence" language. Subpart (B) was not added until 1991. A
6 copy of A.R.S. § 16-101 in 1979 and as amended in 1991 is attached hereto for the Court's
7 convenience. Moreover, Ariz. Op. Atty. Gen. No. 60-59 (September 14, 1960) reached the
8 opposite conclusion when it found that an individual who meets all the requirements and is
9 duly elected to be a member of the board of trustees of a school district and then moves
10 outside the boundaries of that district but retains ownership of real property within the
11 district may not continue as member of the board of trustees. "[A]t the time he ceases to be
12 a resident of the school district his office shall be deemed vacant." *Id.* A copy of the 1960
13 Arizona Attorney General opinion is attached hereto for the Court's convenience.

14
15 Defendants fail to meet their burden to scuttle Poskanzer's registration in the Bison
16 Precinct. The facts are clear. Poskanzer was properly registered under A.R.S. § 16-101 not
17 once, but twice, at the Prescott Valley Property. As a qualified elector, he voted and properly
18 cast a ballot for the Bison Precinct. Those acts ended Poskanzer's registration in the District.
19 *See* A.R.S. § 16-164(A).

20 Poskanzer's voter registration location and voting are strong evidence of his
21 residency regardless of any subjective intentions that Defendants claim he had. Defendants
argue, unconvincingly:

1 Poskanzer's brief registration at the Rental House address [the Prescott Valley
2 Property] was born of his belief that the Service Arizona voter registration
3 website did not recognize the location of the New Home [a vacant lot at the
4 Agave Meadow Way Property] as a valid address. Whether this perception
5 was in fact accurate is immaterial; its significance derives from its
6 manifestation of Poskanzer's state of mind.

7 (DRMSJ at 8.) No facts support Defendants' claim that Poskanzer believed that the Service
8 Arizona voter registration website did not recognize the location of the Agave Meadow Way
9 Property. Poskanzer's beliefs are not in the record and are not part of the JSOF.

10 Defendants' claims that the servicearizona.com system **required** Poskanzer to
11 register at the Prescott Valley Property are flat out wrong. As demonstrated in JSOF Ex. V,
12 the system merely offers keeping the entered address as written, accepting a more postal
13 service friendly form of the address with a "N" directional or going back to the previous
14 page. (JSOF Ex. V.) Poskanzer could have either accepted the address change adding the
15 "N" or accepted the address as he had entered it. He did neither. It is just as plausible to
16 draw the conclusion that Poskanzer did not register to vote at the Agave Meadow Way
17 Property because he knew it was just a vacant lot that he did not own, knew he could not
18 possess it, knew he did not live there, and knew he could not truthfully swear that it was his
19 "residential address" as plainly required on the registration form.

20 Poskanzer reiterated his registration at the Prescott Valley Property address when he
21 registered there a second time using a hand-written voter registration form. (JSOF ¶ 21 &
22 Ex. E.) Even if he misunderstood the servicearizon.com website's error messages, those
23 messages had no impact on his later paper registration. And even though Poskanzer later
24 registered at the vacant lot at the Agave Meadow Way Property, after his qualifications were

1 questioned on the Board Agenda (JSOF ¶¶ 38-39 & Ex. I), he still chose to vote a ballot
2 from the Bison Precinct before making that change. (JSOF ¶¶ 22–25 & Ex. E.) Poskanzer’s
3 actions speak louder than words.

4 **III. Poskanzer and Robert Hilb did not act properly when they “accepted”**
5 **and “ratified” a letter from an Assistant Attorney General.**

6 Defendants’ third contention of error is that Plaintiff’s argument that Poskanzer acted
7 *ultra vires* in accepting the Assistant Arizona Attorney General’s letter’s (“AG’s letter”)
8 (JSOF Ex. P) conclusion that Poskanzer had not vacated his office “would, if accepted by
9 the Court, convert the statutory process for filling vacancies in A.R.S. § 38-291 into an
10 expansive prerogative to coercively remove coequal elected officers from their positions.”
11 (DRMSJ at 2.) This grossly misstates Plaintiff’s position.

12 Defendants argue that the AG’s letter and the statements made therein when
13 declining to initiate a *quo warranto* action found that Poskanzer remained a District resident
14 at all times and never vacated his Board seat. (DRMSJ at 8–10.) For the reasons discussed
15 in Plaintiff’s Motion for Summary Judgment and Plaintiff’s Response to Defendants’ Cross-
16 Motion for Summary Judgment, the AG’s letter is simply wrong. The AG’s letter neglects
17 to address the fact that Poskanzer had no legal right to occupy the Agave Meadow Way
18 Property and neglects to address the fact Poskanzer registered twice and voted using the
19 Prescott Valley Property address. The AG’s letter therefore failed to consider the effect
20 those additional affirmative acts had to contradict Poskanzer’s continued residence in the
21 District. The AG’s letter also does not explain why the Attorney General did not take action
to remove Summers if he thought that Summers was not proper a Board member.

1 Defendants argue that Poskanzer retained the powers of his office and could lawfully
2 vote at the meeting held on June 7, 2019. They argue that “[t]o hold otherwise would
3 effectively transmute A.R.S. § 38-291 into a license for some combination of directors to
4 oust a fellow director from office.” (DRMSJ at 9.) This is an untenable position because, as
5 Defendants point out in their Cross-Motion for Summary Judgment, the vacancy that occurs
6 under A.R.S. § 38-291(5) is automatic when the person holding the office ceases to be a
7 resident of the District. The Board and its attorneys, Robert Lynch and William Whittington,
8 came to the same conclusion Plaintiff came to that Poskanzer vacated his seat pursuant to
9 A.R.S. § 38-291(5) when he moved to, began living at, registered to vote twice at, and voted
10 using the address of the Prescott Valley Property. (JSOF ¶¶ 13-15, 20-23, 40-45, 52 & Ex.
11 E, J-K.) Moreover, Summers could not be removed except by *quo warranto* court order or
12 other operation of law. A.R.S. §§ 12-2041 through 2043. The totality of the circumstances
13 surrounding Poskanzer’s actions make it clear that Poskanzer vacated his Board seat on or
14 about September 1, 2018.

15 As described throughout this Reply, Poskanzer vacated his position on the Board.
16 Further, for the reasons discussed in Plaintiff’s Motion for Summary Judgment and
17 Plaintiff’s Response to Defendants’ Cross-Motion for Summary Judgment, Poskanzer was
18 not a *de facto* member of the Board.

19 **Conclusion**

20 For the foregoing reasons, as well as those described in Plaintiff’s Motion for
21 Summary Judgment and Plaintiff’s Response to Defendants’ Cross-Motion for Summary

1 Judgment, the Court should enter judgment that Summers is and was a member of the Board
2 as of December 21, 2018, and Leopold is and was not ever a member of the Board.

3 RESPECTFULLY SUBMITTED this 30th day of January, 2020.

4 SHEILA POLK
5 YAVAPAI COUNTY ATTORNEY

6 By: /s/ Joy L. Biedermann
7 Joy L. Biedermann
8 Thomas M. Stoxen
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ATTACHMENT – 29 C.J.S. Elections §§ 38- 41

ATTACHMENT – 29 C.J.S. Elections §§ 38- 41

ATTACHMENT – 29 C.J.S. Elections §§ 38- 41

29 C.J.S. Elections § 38

Corpus Juris Secundum December, 2019 Update
Elections

James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Stephen Lease, J.D.; Karl Oakes, J.D. and Barbara J. Van Arsdale, J.D.

- II. Right to Vote
- D. Qualifications of Voters
- 2. Particular Factors
- a. Residency

§ 38. Determination of residence

[Topic Summary](#) [References](#) [Correlation Table](#)

West's Key Number Digest

- West's Key Number Digest, Election Law [§ 75](#), 76

Residence for voting purposes is usually based on domicile.

The term “residence” or “reside,” as used in constitutional and statutory provisions relating to the qualifications of voters, ordinarily is synonymous with home or domicile¹ although there is also authority that “residence” for voting purposes and “domicile” are not synonymous.² The permanent home of a person is considered his “domicile,” and the place of his domicile determines his right to vote.³

In order to be a “resident” of a place under an election statute, a person must be physically present with the intent to remain for a time.⁴ A statute setting out rules for determining a person’s residence for purposes of voter registration provides that the person’s intent is of great import and, thus, emphasizes the person’s intent to make a place a fixed or permanent place of abode.⁵ However, mere intent or an inchoate desire on the part of voter to establish a domicile at a given location is insufficient to establish domicile as a matter of law for purposes of voting; rather, that intention also must be accompanied by acts of living, dwelling, lodging, or residing sufficient to reasonably establish that it is the real and actual residence of the voter.⁶ Conduct such as where a person sleeps and keeps personal belongings may support factors such as presence and intent in a determination of person’s residence in an election district.⁷

Whether a person resides in a particular county according to an election statute definition is a question of fact.⁸ No one factor is dispositive on the question of one’s intended residence;⁹ the elements must form a nexus to fix and determine a residence.¹⁰ Factors relevant in determining domicile for purposes of voting include billing address, residence from which tax returns are filed, mailing address, membership in local clubs, driver’s license, place where a person spends the greatest amount of time, newspaper subscriptions, and the like.¹¹

Place of business or employment.

A mere place of business or employment, such as an office or a place devoted strictly to a commercial enterprise, is not a

voting residence,¹² unless it may be properly adopted as one's domicile, because the voter had not acquired another one.¹³

Homeless people.

Homeless people are not per se ineligible to vote based on residency requirements.¹⁴ Homeless people may be deemed to have a voting residence in a park or shelter.¹⁵

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Footnotes

- 1 Md.—Maryland Green Party v. Maryland Bd. of Elections, 377 Md. 127, 832 A.2d 214, 120 A.L.R.5th 663 (2003).
N.Y.—Willis v. Suffolk County Bd. of Elections, 54 A.D.3d 436, 862 N.Y.S.2d 608 (2d Dep't 2008).
Va.—State ex rel. Sandy v. Johnson, 212 W. Va. 343, 571 S.E.2d 333 (2002).
As to the nature and incidents of domicile, see C.J.S., Domicile §§ 1 et seq.
"Reside" construed to mean "domicile"
Wherever a form of the word "reside" occurs either in the statutes or in the state constitution with respect to voting, it should be construed to mean "domicile."
Ga.—Cook v. Board of Registrars of Randolph County, 320 Ga. App. 447, 740 S.E.2d 223 (2013).
- 2 La.—Miller v. Poinboeuf, 514 So. 2d 484 (La. Ct. App. 3d Cir. 1987).
Distinction explained
A person's "residence" for voting purposes is his or her principal dwelling place, and the term denotes a permanency of some measure; unlike a "domicile," which one has continually from the moment of birth, a person need not at all times have a "residence."
Ill.—Huber v. Reznick, 107 Ill. App. 3d 529, 63 Ill. Dec. 179, 437 N.E.2d 828 (5th Dist. 1982).
- 3 N.J.—In re November 2, 2010 General Election For Office of Mayor in Borough of South Amboy, Middlesex County, 423 N.J. Super. 190, 31 A.3d 945 (App. Div. 2011).
- 4 N.Y.—Stavisky v. Koo, 54 A.D.3d 432, 863 N.Y.S.2d 87 (2d Dep't 2008).
- 5 Ohio—State ex rel. Ross v. Crawford Cty. Bd. of Elections, 125 Ohio St. 3d 438, 2010-Ohio-2167, 928 N.E.2d 1082 (2010).
- 6 N.J.—In re November 2, 2010 General Election For Office of Mayor in Borough of South Amboy, Middlesex County, 423 N.J. Super. 190, 31 A.3d 945 (App. Div. 2011).
- 7 Tex.—Woods v. Legg, 363 S.W.3d 710 (Tex. App. Houston 1st Dist. 2011).
- 8 N.Y.—In re Tripodi, 42 Misc. 3d 283, 974 N.Y.S.2d 764 (Sup 2013), judgment aff'd, 111 A.D.3d 586, 975 N.Y.S.2d 347 (2d Dep't 2013).
Tex.—In re Peacock, 421 S.W.3d 913 (Tex. App. Tyler 2014).
- 9 Tex.—In re Peacock, 421 S.W.3d 913 (Tex. App. Tyler 2014).
- 10 Tex.—Woods v. Legg, 363 S.W.3d 710 (Tex. App. Houston 1st Dist. 2011).
- 11 N.J.—In re November 2, 2010 General Election For Office of Mayor in Borough of South Amboy, Middlesex County, 423 N.J. Super. 190, 31 A.3d 945 (App. Div. 2011).
- 12 U.S.—De La Cruz v. DuFresne, 533 F. Supp. 145 (D. Nev. 1982).
Okla.—Johnson v. State Election Bd., 1962 OK 92, 370 P.2d 551 (Okla. 1962).
S.C.—Easler v. Blackwell, 195 S.C. 15, 10 S.E.2d 160 (1940).
- 13 Okla.—Moore v. Hayes, 1987 OK 82, 744 P.2d 934 (Okla. 1987).

§ 38.Determination of residence, 29 C.J.S. Elections § 38

¹⁴ Ohio—State ex rel. Colvin v. Brunner, 120 Ohio St. 3d 110, 2008-Ohio-5041, 896 N.E.2d 979 (2008).

¹⁵ Alaska—Fischer v. Stout, 741 P.2d 217 (Alaska 1987).
Cal.—Collier v. Menzel, 176 Cal. App. 3d 24, 221 Cal. Rptr. 110 (2d Dist. 1985).

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29 C.J.S. Elections § 39

Corpus Juris Secundum December, 2019 Update
Elections

James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Stephen Lease, J.D.; Karl Oakes, J.D. and Barbara J. Van Arsdale, J.D.

II. Right to Vote

D. Qualifications of Voters

2. Particular Factors

a. Residency

§ 39. Determination of residence—Multiple residences

Topic Summary References Correlation Table

West's Key Number Digest

- West's Key Number Digest, Election Law ¶¶ 75, 76

One may have multiple residences but only one domicile for purposes of voting.

One may have multiple residences but only one domicile for purposes of voting.¹ A person may not have two voting addresses at the same time² even if he or she has several physical residences.³ Therefore, a state may impose a primary home test⁴ or require that a voter be physically present at the place where it is asserted that he or she has acquired a voting domicile.⁵ A person is not precluded from having two residences and choosing one for election purposes provided that he or she has legitimate, significant, and continuing attachments to that residence.⁶ While a voter may have more than one bona fide residence, for purposes of an election statute, he or she may not create an address merely to circumvent voter residency requirements.⁷

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Footnotes

¹ N.J.—In re November 2, 2010 General Election For Office of Mayor in Borough of South Amboy, Middlesex County, 423 N.J. Super. 190, 31 A.3d 945 (App. Div. 2011).

² Pa.—In re Nomination Petition of Driscoll, 577 Pa. 501, 847 A.2d 44 (2004).

³ N.D.—Dietz v. City of Medora, 333 N.W.2d 702 (N.D. 1983).
Pa.—In re Nomination Petition of Driscoll, 577 Pa. 501, 847 A.2d 44 (2004).

One residence for purpose of election

Although an individual may have multiple dwellings, a natural person has but one residence for purposes of a state constitution provision that requires qualified electors to be bona fide residents.

Okla.—In re Initiative Petition No. 379, State Question No. 726, 2006 OK 89, 155 P.3d 32 (Okla. 2006).

§ 39.Determination of residence—Multiple residences, 29 C.J.S. Elections § 39

4 Colo.—Gordon v. Blackburn, 618 P.2d 668 (Colo. 1980).

5 N.J.—Perri v. Kisselbach, 34 N.J. 84, 167 A.2d 377 (1961).

Abode

To establish a residence for purposes of voter qualification, a place of “abode” is the physical place where a person dwells.

Va.—Sachs v. Horan, 252 Va. 247, 475 S.E.2d 276 (1996).

6 N.Y.—Stewart v. Chautauqua County Bd. of Elections, 14 N.Y.3d 139, 897 N.Y.S.2d 704, 924 N.E.2d 812 (2010).

7 N.Y.—Stewart v. Chautauqua County Bd. of Elections, 14 N.Y.3d 139, 897 N.Y.S.2d 704, 924 N.E.2d 812 (2010).

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29 C.J.S. Elections § 40

Corpus Juris Secundum December, 2019 Update
Elections

James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Stephen Lease, J.D.; Karl Oakes, J.D. and Barbara J. Van Arsdale, J.D.

H. Right to Vote

D. Qualifications of Voters

2. Particular Factors

a. Residency

§ 40. Lost or abandoned residence

Topic Summary References Correlation Table

West's Key Number Digest

- West's Key Number Digest, Election Law ¶¶ 75, 76

The question whether a voting residence has been lost or abandoned is one of fact to be determined from the voter's acts and intentions.

The question whether a voting residence has been lost or abandoned is one of fact to be determined from the voter's acts and intentions.¹ A court looks at both the intent of the voter and whether the voter's conduct is reasonably consistent with the residency asserted.² Both physical presence and intention must coincide.³

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Footnotes

¹ Colo.—Kellner v. District Court In and For City and County of Denver, 127 Colo. 320, 256 P.2d 887 (1953).
Ky.—Everman v. Thomas, 303 Ky. 156, 197 S.W.2d 58 (1946).

Voting in another state

A person lost his residence for voting purposes when he voted in another state within one year of the local election at issue.

N.M.—Klumker v. Van Allred, 1991-NMSC-045, 112 N.M. 42, 811 P.2d 75 (1991).

² Ark.—Womack v. Foster, 340 Ark. 124, 8 S.W.3d 854 (2000).

³ Tex.—Slusher v. Streater, 896 S.W.2d 239 (Tex. App. Houston 1st Dist. 1995).

Intention and physical presence without any aura of sham

N.Y.—People v. O'Hara, 96 N.Y.2d 378, 729 N.Y.S.2d 396, 754 N.E.2d 155 (2001).

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29 C.J.S. Elections § 41

Corpus Juris Secundum December, 2019 Update
Elections

James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Stephen Lease, J.D.; Karl Oakes, J.D. and Barbara J. Van Arsdale, J.D.

- II. Right to Vote
- D. Qualifications of Voters
- 2. Particular Factors
- a. Residency

§ 41. Change of residence

Topic Summary References Correlation Table

West's Key Number Digest

- West's Key Number Digest, Election Law ¶ 78

To effect a change of residence for voting purposes, there must be an abandonment of the former residence and the acquisition of a new residence with the intent to make the new residence a permanent home.

An individual's entitlement to vote is not extinguished merely based on a change in residence.¹ Once qualified to vote in a particular district, a person remains entitled to vote in that district until he or she acquires a residence outside the district, and one who moves to a new residence within the same district retains the right to vote there.² To effect a change of residence for voting, there must be an abandonment of the former residence, and the acquisition of a new domicile by actual residence, coupled with an intention to make it a permanent home.³ For instance, a change of residence is not established where moving is conditioned upon obtaining employment at the new location.⁴

A temporary absence, even of some duration, is not a change of residence⁵ if the voter intends to return to the jurisdiction⁶ or is between residences and has not yet obtained a new domicile.⁷ If a person leaves the place of his or her domicile temporarily, or for a particular purpose, and does not take up an actual residence elsewhere with the avowed intention of making a change in domicile, he or she will not be considered as having changed domicile.⁸

While statements or declarations with respect to the temporary nature of an absence from the voter's place of residence are not controlling,⁹ a written notice of a change of address given to election officials is sufficient to rebut the presumption that a voter continues to reside in a district where that voter previously registered.¹⁰

Location of one's spouse and children.

Although a person may have a separate residence from that of his or her spouse, in the context of determining residency for voter registration purposes, the location of one's spouse and children can nevertheless be relevant to determining whether the person actually relocated his or her residence.¹¹

Footnotes

- 1 Md.—Nader for President 2004 v. Maryland State Board of Elections, 399 Md. 681, 926 A.2d 199 (2007).
- 2 Md.—Maryland Green Party v. Maryland Bd. of Elections, 377 Md. 127, 832 A.2d 214, 120 A.L.R.5th 663 (2003).
- 3 Ark.—Clement v. Daniels, 366 Ark. 352, 235 S.W.3d 521 (2006).
N.Y.—Willis v. Suffolk County Bd. of Elections, 54 A.D.3d 436, 862 N.Y.S.2d 608 (2d Dep't 2008).
Merely obtaining new house
A person may not, for purposes of the election laws, simply declare a new residence or domicile by purchasing or renting a home; that person must also have an intent to live in the new residence permanently, and if the person is married and not separated from his or her spouse, both must intend to live there permanently.
Pa.—In re Nomination Petition of Driscoll, 577 Pa. 501, 847 A.2d 44 (2004).
- 4 Ala.—Jacobs v. Ryals, 401 So. 2d 776 (Ala. 1981).
- 5 N.Y.—Sauer v. Springbrook Fire Dist. of Town of Elma, 284 A.D.2d 1016, 726 N.Y.S.2d 511 (4th Dep't 2001).
Tex.—Kiehne v. Jones, 247 S.W.3d 259 (Tex. App. El Paso 2007).
- 6 N.Y.—Sauer v. Springbrook Fire Dist. of Town of Elma, 284 A.D.2d 1016, 726 N.Y.S.2d 511 (4th Dep't 2001).
- 7 Md.—Maryland Green Party v. Maryland Bd. of Elections, 377 Md. 127, 832 A.2d 214, 120 A.L.R.5th 663 (2003).
- 8 Ga.—Cook v. Board of Registrars of Randolph County, 320 Ga. App. 447, 740 S.E.2d 223 (2013).
- 9 Ala.—Mitchell v. Kinney, 242 Ala. 196, 5 So. 2d 788 (1942).
Ky.—Everman v. Thomas, 303 Ky. 156, 197 S.W.2d 58 (1946).
- 10 Alaska—Cissna v. Stout, 931 P.2d 363 (Alaska 1996).
- 11 Haw.—Dupree v. Hiraga, 121 Haw. 297, 219 P.3d 1084 (2009).

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ATTACHMENT – A.R.S. § 16-101 in 1979 and as amended in 1991

ATTACHMENT – A.R.S. § 16-101 in 1979 and as amended in 1991

ATTACHMENT – A.R.S. § 16-101 in 1979 and as amended in 1991

ELECTIONS AND ELECTORS

CHAPTER 209

HOUSE BILL 2028

An Act relating to elections and electors; prescribing a new elections code; making conforming changes; repealing title 16, Arizona Revised Statutes, except chapter 11; amending the Arizona Revised Statutes, by adding a new title 16; transferring title 16, chapter 11, Arizona Revised Statutes, for placement in the new title 16, Arizona Revised Statutes, as chapter 8; transferring title 16, chapter 11, article 1, Arizona Revised Statutes, for placement in the new title 16, chapter 8, Arizona Revised Statutes, as article 1 and renumbering sections 16-1401 as 16-1101, 16-1402 as 16-1102 and 16-1403 as 16-1103; amending sections 1-305, 9-822, 9-823, 9-1001, 15-471, 15-472.01, 15-473.01, 15-478, 19-101, 19-112, 19-205, 19-212, 22-426, 36-305, 41-1205, 41-1348, 45-1519.01 and 45-1649, Arizona Revised Statutes, and providing for conditional enactment.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Purpose

The legislature intends by this act to provide for a substantial and orderly relocation of existing provisions of law relating to elections and electors within title 16, Arizona Revised Statutes, to make certain substantive amendments to those and related provisions and to prescribe conforming amendments to sections within other titles of Arizona Revised Statutes.

Sec. 2. Repeal

Title 16, Arizona Revised Statutes, except chapter 11, is repealed.

Sec. 3. Arizona Revised Statutes are amended by adding a new title 16, to read:

TITLE 16ELECTIONS AND ELECTORSCHAPTER 1.—QUALIFICATION AND REGISTRATION OF ELECTORSARTICLE 1. QUALIFICATIONS FOR REGISTRATION§ 16-101. Qualifications of registrant

Every resident of the state is qualified to register to vote if he:

1. Is a citizen of the United States.
2. Will be eighteen years or more of age prior to the regular general election next following his registration.
3. Will have been a resident of the state fifty days next preceding the election, except as provided in §§ 16-126 and 16-127.
4. Is able to write his name or make his mark, unless prevented from so doing by physical disability.
5. Has not been convicted of treason or a felony, unless restored to civil rights, is not under guardianship, non compos mentis or insane.

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1991
ARIZONA
SESSION LAWS

Fortieth Legislature
Third Special Session

ELECTIONS—INITIATIVE, REFERENDUM AND RECALL

CHAPTER 1

S.B. 1001

AN ACT AMENDING SECTIONS 1-261, 16-101, 16-121, 19-101, 19-102, 19-111, 19-112, 19-114, 19-121, 19-121.04, 19-121.05, 19-122, 19-123, 19-124, 19-125, 19-141, 19-142, 19-143, 19-201, 19-202, 19-202.01, 19-203, 19-205, 19-208.01, 19-208.02, 19-208.05, 19-210, 19-212, 19-216, 41-1239 AND 41-1304, ARIZONA REVISED STATUTES; AMENDING TITLE 16, CHAPTER 6, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 16-914.01; REPEALING SECTIONS 19-121.01, 19-121.02, 19-128 AND 19-144, ARIZONA REVISED STATUTES; AMENDING TITLE 19, CHAPTER 1, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING NEW SECTIONS 19-121.01, 19-121.02 AND 19-128; RELATING TO INITIATIVE, REFERENDUM AND RECALL.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 1-261, Arizona Revised Statutes, is amended to read:

§ 1-261. Withdrawal of petition signature; payment of remuneration; violation; classification

A. A qualified person who has signed a petition prescribed by statute for any initiative, referendum, ~~recall~~ or formation or modification of a county, municipality or district may withdraw the his signature from the petition not later than five o'clock 5:00 p.m. on the date set by law for filing of the petition, or if no date is set by law, ~~five o'clock 5:00 p.m.~~ five o'clock 5:00 p.m. on the date the petition containing the person's signature is actually filed. A person who has signed a recall petition may withdraw his signature from the petition not later than 5:00 p.m. on the date the petition containing the person's signature is actually submitted for verification pursuant to section 19-203.

B. To withdraw a petition signature, a person may either:

Additions are indicated by underline; deletions by ~~strikeout~~

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Ch. 1

40th LEGISLATURE

1. Verify the withdrawal by signing a simple statement of intent to withdraw at the office of the receiving officer.

2. Mail a signed, notarized statement of intent to withdraw to the receiving officer.

C. A signature withdrawn pursuant to subsection B of this section and received by the receiving officer within the time provided for in subsection A of this section shall not be counted in determining the legal sufficiency of the petition.

D. A person who knowingly gives or receives money or any other thing of value for signing a statement of signature withdrawal pursuant to subsection B of this section is guilty of a class 1 misdemeanor.

Sec. 2. Section 16-101, Arizona Revised Statutes, is amended to read:

§ 16-101. Qualifications of registrant; definition

A. Every resident of the state is qualified to register to vote if he:

1. Is a citizen of the United States.
2. Will be eighteen years of age or more on or before the date of the regular general election next following his registration.
3. Will have been a resident of the state twenty-nine days next preceding the election, except as provided in section 16-126.
4. Is able to write his name or make his mark, unless prevented from so doing by physical disability.
5. Has not been convicted of treason or a felony, unless restored to civil rights.
6. Is not under guardianship, non compos mentis or insane.

B. For purposes of this title, "resident" means an individual who has actual physical presence in this state, or for purposes of a political subdivision actual physical presence in the political subdivision, combined with an intent to remain. A temporary absence does not result in a loss of residence if the individual has an intent to return following his absence. An individual has only one residence for purposes of this title.

Sec. 3. Section 16-121, Arizona Revised Statutes, is amended to read:

§ 16-121. Qualified elector defined

A person who ~~has~~ is qualified to register to vote pursuant to section 16-101 and who is properly registered to vote shall, if he is at least eighteen years of age on or before the date of the election, be deemed a qualified elector for any purpose for which such qualification is required by law, except as provided in section 16-126.

Sec. 4. Title 16, chapter 6, article 1, Arizona Revised Statutes, is amended by adding section 16-914.01, to read:

§ 16-914.01. Reporting of contributions by committees acting on ballot measures

A. In addition to the requirements relating to election contributions prescribed in section 16-914, a committee acting in support of or opposition to the qualification, passage or defeat of an initiative or referendum or any other ballot measure, question or proposition shall give notice to the secretary of state of any contribution or group of contributions to the committee from a single source less than twenty days before the day of the election if it exceeds:

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Additions are indicated by underline; deletions by ~~strikeout~~

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ATTACHMENT – Ariz. Op. Atty. Gen No. 60-59 (September 14, 1960)

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1960

OPINIONS

and Report of

THE ATTORNEY GENERAL



WADE CHURCH
The Attorney General
CAPITOL, PHOENIX

Berry v. Kiefer, 38 Okla. 337, 133 P. 1126, under an entirely different treatment of the question, holds that the sheriff is not entitled to the fee.

The Attorney General concludes that the rule announced in *Lyman v. Thorn*, supra, both from the viewpoint of logic and the law, is sound and, therefore, the question presented is answered in the affirmative.

WADE CHURCH
The Attorney General

/s/ LESLIE C. HARDY

LESLIE C. HARDY
Chief Assistant Attorney General

September 14, 1960

Opinion No. 60-59

REQUESTED BY: DEPARTMENT OF PUBLIC INSTRUCTION

OPINION BY: WADE CHURCH, The Attorney General

QUESTION: If an individual meets all the requirements and is duly elected to be a member of the board of trustees of a school district then moves outside the boundaries of that district but retains ownership of real property within the district, may he continue as a member of the board of trustees?

CONCLUSION: No.

Arizona Revised Statutes, § 15-472, *Qualifications of school trustees*, provides that:

"A person who is a registered voter of the state and has been a resident of the district for one year immediately preceding the day of election is eligible for election to the office of trustee."

Since there is no specific provision setting out qualifications for retention of office of school trustee or listing circumstances concerning vacancies in that office, recourse to general statutes is indicated. Before continuing, however, it must be emphasized that the ownership of property within the district has no bearing whatever on the question. It is not a qualification for eligibility to serving as a school trustee. It is a qualification for an elector to vote on a bond issue in the school district, but not for election of trustee.

A.R.S. § 38-291 defines "vacancy" in public office as occurring "from and after" any of ten listed events. The fifth of the ten is "Ceasing to be a resident of the state, or, if the office is local, of the district, county, city, town or precinct for which he was elected or appointed, or within which the duties of his office are required to be discharged."

A trustee of a school district is a public officer within the meaning of the definition controlling the provisions of Title 38 of Arizona Revised Statute, *Public Officers and Employees*. A.R.S. § 38-101 defines public officer as the incumbent of any office, member of any board or commission, which includes any office, board or commission of the state or any political subdivision thereof. It has been held that to constitute a public office a "specific position must be created by law, there must be certain definite duties imposed by law on the incumbent, and these duties must involve some portion of sovereign power." The position of school trustee meets these conditions.

It has been held also that a school district is a subdivision of the county, *Sorenson v. Superior Court of Maricopa County*, 31 Ariz. 421, 254 P. 230, and that a regularly organized school district is a quasi-public

corporation and acts as a governmental agency for the sole purpose of furthering educational facilities and administering the public education system of the state. *Sawaya v. Tucson High School District No. 1*, 78 Ariz. 389, 281 P. 2d 105; *Howard v. Luke*, 18 Ariz. 563, 164 P. 439.

Based upon the foregoing considerations, our conclusion is that a trustee of a school district is a public officer pursuant to the provisions of Title 38 of Arizona Revised Statutes, and that at the time he ceases to be a resident of the school district his office shall be deemed vacant.

BETSY C. FREDERICKSON
Assistant Attorney General

/s/ WADE CHURCH

WADE CHURCH
The Attorney General