

## N.D.A.G. Letter to Riehl (June 5, 1986)

June 5, 1986

Honorable Emil J. Riehl  
District #35  
House of Representatives  
Raleigh, ND 58564

Dear Representative Riehl:

Thank you for your letter of May 24, 1986, regarding voter residency requirements and anonymity of individuals voting by absentee ballot.

North Dakota law, as found at N.D.C.C. § 16.1-01-04, provides that a person's voting residence is determined in accordance with the rules for determining residency as provided in N.D.C.C. §54-01-26. The residency rules are as follows:

54-01-26. RESIDENCE -- RULES FOR DETERMINING. Every person has in law a residence. In determining the place of residence, the following rules shall be observed:

1. It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he returns in seasons of repose.
2. There can be only one residence.
3. A residence cannot be lost until another is gained.
4. The residence of the supporting parent during his or her life, and after the supporting parent's death, the residence of the other parent is the residence of the unmarried minor children.
5. An individual's residence does not automatically change upon marriage, but changes in accordance with subsection 7. The residence of either party to a marriage is not presumptive evidence of the other party's residence.
6. The residence of an unmarried minor who has a parent living cannot be changed by either his own act or that of his guardian.

7. The residence can be changed only by the union of act and intent.

(Emphasis supplied.)

In Mittelstadt v. Bender, 210 N.W.2d 89 (N.D. 1973), the North Dakota Supreme Court applied the residency rules in N.D.C.C. § 54-01-26 to an absentee voting situation. The court found that a residence cannot be lost until another is gained and that a residence can be changed only by the union of act and intent. See also, Wehrung v. Ideal School District, 78 N.W.2d 68 (N.D. 1956).

Therefore, voter eligibility is a question of fact and the statutory provisions regarding voter residency must be applied on a case-by-case basis. Furthermore, an unmarried son or daughter who is not currently living at home with their parents may still declare the parental home as their voting residence as long as the son or daughter has not established residency elsewhere.

In regard to your second question as to whether a list of persons voting by absentee ballot must be maintained. You are correct in that the election law does not require that a list be maintained of the individuals voting by absentee ballot. See N.D.C.C. Ch. 16.1-07. However, by necessity, county auditors maintain a log book showing: those individuals who have requested applications for absentee ballots; whether the application was submitted; and by what method the absentee ballot was delivered to the voter, whether by mail, in person, or by agent.

Therefore, I strongly recommend that a clerk of a school district maintain a log book showing those individuals who voted by absentee ballot. Furthermore, pursuant to the open records law, this log book would be subject to public inspection. See N.D.C.C. § 44-04-18.

Sincerely,

Nicholas J. Spaeth

cv

cc: Alvina Wang