OPINION
42-37

October 30, 1942 (OPINION)

CITIES

RE: Residence of Aldermen

Your letter of the twenty-seventh inst. addressed to the attorney general has been received and contents noted.

You state that one of your aldermen has recently moved into a house in another ward in order to make it more convenient for his daughter to attend the teachers college. He still retains ownership of his house in the ward from which he moved, and he regards the same as his permanent residence. You ask whether under those circumstances, he would be disqualified from representing his original ward as alderman.

I presume your question is one of fact rather than of law. Section 3675 of the laws of 1913 provides that:

> "Any officer removing from the city or ward from which he is elected * * * * shall be deemed to have vacated his office and the city council shall proceed to fill the vacancy as herein prescribed."

It is a well-established principle that "residence" includes two elements, namely, action and intent; that is , there must be a union of act and intent in fixing the place of residence.

Then, too, we have Article 40 of the Amendments to the State Constitution which provides that:

> "Where a qualified elector moves from one precinct to another within the state he shall be entitled to vote in the precinct from which he moves until he establishes his residence in the precinct to which he moves."

Section 3585 of the Compiled Laws provides that:

> "No person shall be eligible to the office of alderman who is not a qualified elector of and resident within the ward from which he is elected."

This, of course, brings us back to the original question as to where his legal residence is and this brings us squarely back to the proposition that residence involves the two elements of act and intent.

In a recent Montana case, the Court has occasion to discuss the meaning of the word "residence" in the following language:

> “While the word "residence" has been involved in many controversies as will be seen from reported cases, it will be found that it is not the word itself that has been difficult of understanding. It has been in the construction of language expressive of the effect of residence, and of the rights arising therefrom and based on the fact of residence. In each such case the word becomes a part of a concept larger than itself, such as residence necessary to the right to vote, residence in establishing a domicile, residence necessary to citizenship, etc. In each such case the context in connection with which the word is used must be considered, and the word, together with the context, then gives the meaning sought to be conveyed. There is thereby no change made in the simple, clear meaning of the word itself. In re Coppack's Estate, 72 Mont. 431, 234 P. 258, 39 A.L.R. 1152; Archer v. Archer, 106 Mont. 116, 75 P. 2d 783; State ex rel. Duckworth v. District Court, 107 Mont. 97, 80 P. 2d 367. The fact of residence, of course, must be determined in each case from the evidence adduced, and by the application thereto of ordinary rules of evidence."

While I am not prepared to say definitely that the residence of this alderman is in one ward or the other, it would seem from the general principles of law and interpretation of the word "residence" that he is still a resident of the original ward, provided, of course, that it is his bona fide intention to maintain the same as his legal place of residence.

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Attorney General