

OPINION
47-203

March 14, 1947 (OPINION)

RESIDENCE

RE: Holding Township Office

Your letter of March 11, 1947, addressed to the attorney general, has been received in which you enclose copy of a letter written by you on March 11, 1947, to Mr. Herb Schrank, original letter written by you on April 1, 1943, to Mr. John Hopperstad, and letter dated May 8, 1943, written to you by Mr. Wm. R. Pearce, then assistant attorney general.

The question presented is as follows: "A semi-retired farmer moved from his farm to town but keeps his legal and voting residence in the township. He has held office in the township for a number of years, and although he now physically resides in Grafton, nevertheless, he considers the township his legal residence and votes there. May he hold a township office under the circumstances?"

Article 40 of the Amendments to the State Constitution prescribes qualifications of electors as follows:

"Every qualified elector, who shall have resided in the state one year, in the county ninety days and in the precinct thirty days next preceding any election, shall be entitled to vote at such election. Provided 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."

Article 37 of the Amendments to the State Constitution provides as follows:

"Every person of the age of twenty-one years or upwards, belonging to either of the following classes who shall have resided in the state one year and in the county ninety days and in the precinct thirty days next preceding any election shall be a qualified elector at such election. First, citizens of the United States, second, civilized persons of Indian descent who have severed their tribal relations two years next preceding such election."

The constitutional provisions quoted prescribe qualifications of electors and such qualifications cannot be changed by any statute. If, therefore, the person to whom you refer has resided one year in the state, ninety days in the county, and thirty days in the precinct, he is an elector of such precinct and as such entitled to hold office there.

Two elements are to be considered in determining residence, act and intent, and there must be union of the two. Where a person maintains his legal residence in a township, casts his vote there, and to all intents and purposes considers that his home, he is a resident there

even though he stays there only part of the time.

I do not agree with the views expressed in Mr. Pearce's letter. The Constitution prescribes the qualifications of the electors, and the Legislature may not prescribe additional qualifications. If a person is a citizen of the United States, twenty-one years of age, has resided in the state one year, in the county ninety days, and in the precinct thirty days, he may not only vote there but he may also hold office there. We return your correspondence herewith.

NELS G. JOHNSON

Attorney General