



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 14, 2021

Mr. Rusty Friedrichs
Goliad County Auditor
Post Office Box 526
Goliad, Texas 77963

Opinion No. KP-0377

Re: Residency requirement to become a candidate for county attorney (RQ-0396-KP)

Dear Mr. Friedrichs:

You ask about the residency requirement for a person to become a candidate for county attorney.¹ You offer no specific facts but inquire whether “residence” for such purpose is based on either intent or actual residency. *See* Request Letter at 1.

Article XVI, section 14 of the Texas Constitution requires all district or county officers to reside “within their districts or counties.” TEX. CONST. art. XVI, § 14. A person failing to comply with this requirement “shall vacate the office so held.” *Id.* The Election Code provides that a candidate for a public office “must . . . have resided continuously in the state for 12 months and in the territory from which the office is elected for six months immediately preceding” one of several specified dates.² TEX. ELEC. CODE § 141.001(a)(5).

The Election Code defines “residence” to mean “domicile, that is, one’s home and fixed place of habitation to which one intends to return after any temporary absence.” *Id.* § 1.015(a). It further provides that a person does not lose his or her residence by leaving that home “to go to another place for temporary purposes only.” *Id.* § 1.015(c). Conversely, “[a] person does not acquire residence in a place to which the person has come for temporary purposes only and without the intention of making that place the person’s home.” *Id.* § 1.015(d). Thus, in defining “residence,” the Election Code considers intent.

¹*See* Letter from Mr. Rusty Friedrichs, Goliad Cnty. Auditor, to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (Jan. 15, 2021), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2021/pdf/RQ0396KP.pdf> (“Request Letter”).

²As a county officer, a county attorney must reside in the state and county for the requisite time period. *See* TEX. CONST. art. V, § 21 (providing that “[a] County Attorney . . . shall be elected by the qualified voters of each county . . .”). *See generally* *Ryan v. Azios*, 535 S.W.2d 50, 53 (Tex. App.—San Antonio 1976, orig. proceeding [mand. denied]) (determining that residency requirement for candidate for county attorney was not in conflict with article XVI, § 14).

Further, the Election Code specifies that the determination of residence must accord with the “common-law rules, as enunciated by the courts of this state, except as otherwise provided by this code.” *Id.* § 1.015(b). In *Mills v. Bartlett*, the Texas Supreme Court announced principles applicable to determining a person’s residence for purposes of the Election Code. *See* 377 S.W.2d 636, 637 (Tex. 1964). The Court described the concept of “residence” as one that is “elastic . . . and . . . extremely difficult to define.” *Id.* The Court stated that the meaning of “residence”

depends upon the circumstances surrounding the person involved and largely depends upon the present intention of the individual. Volition, intention, and action are all elements to be considered in determining where a person resides and such elements are equally pertinent in denoting the permanent residence or domicile.

. . . Neither bodily presence alone nor intention alone will suffice to create the residence, but when the two coincide at that moment the residence is fixed and determined.

Id. Courts continue to use these principles to examine a person’s residency for purposes of the Election Code. *See, e.g., Woods v. Legg*, 363 S.W.3d 710, 714–15 (Tex. App.—Houston [1st Dist.] 2011, no pet.).

Courts recognize that the question of a person’s residency depends on “circumstances surrounding the person involved and largely depends upon the present intention of the individual.” *Id.* at 714 (considering residency for a voter). The question “centers on both the person’s expression of intent to remain at, or return to, the alleged residence, as well as the circumstances that led to their presence or absence and those tending to show that the person is likely to remain at or return to the alleged residence.” *Id.*; *see also State v. Fischer*, 769 S.W.2d 619, 623–24 (Tex. App.—Corpus Christi 1989, writ dismissed w.o.j.) (considering residency for a candidate); Tex. Att’y Gen. Op. No. JM-231 (1984) at 2 (recognizing the Election Code’s definition of “residence” has been construed to mean the same for the purposes of voting as for the purposes of running for political office) (citing *Prince v. Inman*, 280 S.W.2d 779 (Tex. App.—Beaumont 1955, no writ)). As this office previously recognized, “[u]nder current law, the determination regarding ‘residence’ thus involves both physical presence and current intention” of the person. Tex. Att’y Gen. Op. No. GA-0141 (2004) at 5.

In sum, determining the question of residency of any candidate for office, including that of county attorney, involves consideration of both intent and physical presence, which are factual circumstances. It is not within the authority of this office to determine those factual questions. *See Parker v. Brown*, 425 S.W.2d 379, 381 (Tex. App.—Tyler 1968, no writ) (explaining question of residence is to be judicially determined); Tex. Att’y Gen. Op. No. JM-231(1984) at 3.

S U M M A R Y

Determining residency for purposes of the Election Code involves consideration of both a person's physical presence and current intention to reside in a particular location.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

KEN PAXTON
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