Dear Dr. Offutt:

I am in receipt of your letter of August 2, 1965, in which you inquire as to the residence requirement for obtaining a marriage license.

After citing the Act involved and mentioning how the problem was brought to your attention, your letter proceeds:

"The above-noted act provides for the event of both the contracting parties being nonresidents of the State of Indiana, and for residents of the state it provides that license shall be obtained from the clerk of the Circuit Court of the county in which either or both of the parties reside. Question is how long one must be in a county to be a legal resident. Mr. Marquart says that it is his feeling that determination of residence can be done on the basis of the voter registration law which provides for six months to establish residency.

"Mr. Marquart further states that his attitude has been complicated because he has been told by an attorney that an applicant who makes a declaration that he intends to live in Allen County may be issued a marriage license.

"It is, therefore, respectively requested that we have your official opinion on the matter of determination of residence for the issuance of a marriage license."

The controlling statute on this point is 1 R.S. 1852, ch. 67, § 4a, as added by Acts of 1957, ch. 130, § 1, and amended by Acts of 1959, ch. 117, § 1, same being Burns IND. STAT. ANN. (1965 Supp.), § 44-201, which provides, inter alia:
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“(a) Before any person shall be joined in marriage they shall produce a license to marry obtained from the clerk of the circuit court of the county in which either or both of the parties reside: Provided, That in the event both of the parties are non-residents of the State of Indiana, the license to marry shall be obtained from the clerk of the circuit court of the county in which the marriage ceremony is to be performed. . . .”

The statute does not contain any indication of the period of time an applicant for a marriage license must live in the county before that county becomes the county in which he resides. Therefore, it is necessary to interpret the term “reside.”

In *Johnson v. Smith*, 94 Ind. App. 619, 180 N.E. 188 (1932), the Court said, on page 622:

“Not only have our courts construed the words ‘reside’ and ‘residence’ to be synonymous when used in a statute, but such has been the construction placed thereon by the courts of many other states.”

In *Brownlee v. Duguid*, 93 Ind. App. 266, 178 N.E. 174 (1931), the Court said, on page 268:

“‘Resident’ has been defined by many cases with various interpretations. An extensive compilation of such cases here would serve no useful purpose. We have in Indiana the cases of . . . which have set out the salient features; namely bodily residence in a place coupled with an intention to make such place a home, which establishes a domicile or residence. The intention must be found in the conduct and statements, if any, prior to the time it is questioned.”

In the same case the Court, on page 270, said:

“The place where a person lives is *prima facie* taken to be his residence, unless facts can be established to the contrary.

“The elector’s residence is the place where he makes his permanent or true home.
The term ‘residence’ has been judicially defined as the abode or dwelling place, as distinguished from a mere temporary locality of existence. Residence, and even domicile, is a quality which endures when once acquired, until changed *animo et facto*.

It therefore appears that a person who has bodily residence in, and intends to remain in, a county, resides in that county irrespective of the length of time he has had such residence and intention. This conclusion is consistent with the qualifications for electors as set out in Art. 2, Sec. 2, of the Indiana Constitution, which provides:

“In all elections not otherwise provided for by this Constitution, every citizen of the United States, of the age of twenty-one years and upwards, who shall have resided in the state during the six months, and in the township sixty days, and in the ward or precinct thirty days immediately preceding such election, shall be entitled to vote in the township or precinct where he or she may reside.”

The residence provision is that the voter must reside for a given period of time before he is qualified to vote. Obviously, the determination of residence cannot be dependent upon the right to vote.

Therefore, it is my opinion that, absent any statutory specification of a required length of residence as a precedent to the obtaining of a marriage license, an applicant must be considered to have satisfied the requirement as soon as he establishes a bona fide residence in the county.

OFFICIAL OPINION NO. 42

September 24, 1965

Hon. Charles K. Abshier
State Representative
3320 Hillcrest Terrace
Evansville, Indiana 47712

Dear Representative Abshier:

This is in response to your request for my opinion interpreting the effect on Pigeon Township of Vanderburgh