

OFFICIAL OPINION NO. 15

April 30, 1963

Mr. Edwin Steers, Sr.
Member, State Election Board
108 E. Washington Street
Indianapolis, Indiana

Dear Mr. Steers:

This is in response to your request of April 11, 1963, wherein you request an Official Opinion pertaining to residence qualifications for voting of a husband and wife, both of whom are students in college.

Your request is based on a letter from the Clerk of the DeKalb Circuit Court which reads, in part, as follows:

"I have in my county a girl who was originally registered to vote in this county (DeKalb), she then became married and her husband was registered in the adjoining county of Steuben. They both are now going to school in Marion County. Now, as I understand the election laws the girl *must* take her husband's residence as her residence and register to vote in the same county (Steuben) as he *cannot* change his residence as long as he is a student in college."

It thus appears that the two questions presented by the above letter are as follows:

- (1) Is a married woman always required to take the voting residence of her husband?
- (2) May a married man, while a student, in college, change his voting residence?

In a consideration of your questions let us first review the constitutional and statutory provisions of our state pertaining to residence requirements for voting. The Indiana Constitution, Art. 2, Sec. 2, provides as follows:

"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

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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 Indiana Election Code, being the Acts of 1945, Ch. 208, in Sections 189 and 198, as amended, as found in Burns' (1949 Repl.), Section 29-4803 and Burns' (1962 Supp.), Section 29-4905, respectively, provides as follows:

29-4803. "The precinct election board, in determining the residence or domicile of any person desiring to vote, shall be governed by the following rules, so far as they are applicable.

1. The residence of any person shall be held to be in that place in which his habitation is fixed, without any present intention of removing therefrom, and to which, whenever he is absent, he intends to return;

* * *

6. The place where a man's family resides shall be considered his residence, but if it be a temporary establishment for his family, or for transient purposes, it shall not be so considered;

7. If a man has his family living in one place and he does business in another, the former shall be considered his residence, but when a man has taken up his abode at any place with the intention of remaining there, and his family refuses to reside with him, then such place shall be considered his residence; *a married woman not living in a household with her husband may establish a separate voting residence from that of her husband.*

* * *

15. The word residence in so far as this act is concerned shall mean domicile." (Our emphasis)

See: "Election Laws of Indiana" 1963, issued by State Election Board, pages 47, 48 and 49.

29-4905. *"No student while in attendance at any institution of learning, or the wife of such student, shall be deprived of his or her vote by reason of his or her absence from the township, ward or precinct in which he or she resides: Provided, That no student while in attendance at any institution of learning located in the state, or the wife of such student, shall be deemed to have gained a residence for voting purposes in the state or township, ward or precinct of the state where the residence is established solely for attendance at such institution of learning."* (Our emphasis)

An examination of the requirements of voting residence, under the Indiana Election Code, is essential in a consideration of your questions. In Burns' 29-4803, *supra*, it is stated: "15. The word residence in so far as this act is concerned shall mean domicile." Thus, for voting purposes the term "residence" shall meet the same requirements as that of a "domicile."

In the case of Croop v. Walton (1927), 199 Ind. 262, 157 N.E. 275, it is stated:

"No precise or exact definition of the term 'domicile' which responds to all purposes seems to be possible. It is the place with which a person has a settled connection for legal purposes, either because his home is there or because it is assigned to him by the law, *and is usually defined as that place where a man has his true, fixed, permanent home, habitation and principal establishment, without any present intention of removing therefrom and to which place he has, whenever he is absent, the intention of returning.* 1 Bouvier's Law Dict. (Rawles 2d Rev.) 915; 19 C. J. 392; 9 R. C. L. 538; 3 Words and Phrases 2168; 2 Words and Phrases (2d ed.) 133 * * *

* * *

"Domicile is of three kinds—domicile of origin or birth, domicile by choice, and domicile by operation of

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law. Domicile by choice—as was appellee's domicile at Sturgis—has for its true basis or foundation the intention of the person. *Whether appellee changed his domicile depends very largely upon his intention. To effect a change of domicile, there must be an abandonment of the first domicile with an intention not to return to it, and there must be a new domicile acquired by residence elsewhere with an intention of residing there permanently or at least indefinitely. * * ** (Here follows a long list of citations) (Our emphasis)

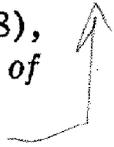
In my 1958 O. A. G., pages 69, 74, No. 16, after quoting from the above case I made the following additional statement:

“Some tests of domicile, which are listed in the Croop case, *supra*, at page 273, are payment of taxes at the domicile, hotel registration noting the domicile, voting at the domicile, oral and written declarations in deeds, insurance policies, mortgages, leases and contracts that such was his domicile, selected the domicile as a burial place for his daughter, and maintaining membership in lodges, clubs, and a church at the domicile.

“The fact of whether domicile has been established at the place where the student is attending a college or university is to be determined individually by the above *criteria*; however, the usual situation is that a student will have a manifest intention to return to his home as a domicile on the occurrence of his graduation, an event which may reasonably be anticipated, and so he would not necessarily have lost his domicile by residence at or near a college or university.”

It is well settled that a person may reside in one place and have his or her domicile in another. It is also emphasized that a person has but one domicile, and that continues until a domicile is created at another place. In the case of *State ex rel. Flaughner v. Rogers* (1947), 226 Ind. 32, 35, 77 N. E. (2d) 594, it is stated:

“It may be stated that a person may reside one place but have his domicil in another. It may also be said

that a domicil is a fixed residence to which one intends to return if he goes somewhere else for residence for a particular purpose or for a limited time. *A person has but one domicil, and that continues until a domicil is created at another place.* There cannot be two domicils for one person. *To change or effect a change in domicil there must be an actual moving with the intent to go to the given place and there to remain. It must be an intention coupled with acts evidencing that intention to make the new domicil a home in fact.* 28 C. J. S., § 11(c), p. 17; *State ex rel. v. Scott* (1908), 171 Ind. 349, 358, 86 N. E. 409, 412; *Restatement of the Law of Conflicts* § 9, p. 17.” (Our emphasis) 

The Appellate Court of Indiana in the case of *Brownlee v. Duguid* (1931), 93 Ind. App. 266, 270, 271, 178 N. E. 174, stated as follows:

“The elector’s residence is the place where he makes his permanent or true home. *Fry’s Election Case* (1872), 71 Pa. 302, 10 Am. Rep. 698.

“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*. *In re Hughes’ Infants* (1867), 1 Tuck (N. Y.) 38.

“Although intention is an important element of the status of an elector, his own statement as to any such intent cannot, of itself, be controlling in respect to his residence for voting purposes. *Seibold v. Wahl* (1916), 164 Wis. 82, 159 N. W. 546, Ann. Cas. 1917C 400.

“Although this court believes in and is in harmony with the almost universal rule that intention is an important element in determining the status of an elector as regards his residence, *we are of the opinion that his own statement of a mental resolution as to any such intent cannot of itself be controlling, but must be taken in connection with his acts and conduct. The mere fact that an elector is willing to swear and*

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*does swear that he considers a certain place his home is not sufficient to entitle him to vote, if the facts and circumstances show that his home and domicile are elsewhere. It follows, therefore, that intent is not a mere arbitrary or whimsical declaration on the part of the individual, but must be gathered from his conduct as evidenced in his daily life, and other acts and circumstances which may have some bearing upon his mode or method of living * * ** (Our emphasis)

See also: 29 C. J. S. Elections, § 19;
11 I. L. E. Elections § 23;
1945 O. A. G., pages 161, 162, No. 34.

Your first question reads: "Is a married woman always required to take the voting residence of her husband?" In view of the provisions of Burns' 29-4803, *supra*, this, in effect, means is a married woman always required to take the domicile of her husband inasmuch as the Indiana Election Code says for the purposes of this act the word "residence" shall mean "domicile."

The Indiana Supreme Court, in *Jenness v. Jenness* (1865), 24 Ind. 355, 357, stated:

"The general rule undoubtedly is that the domicil of the wife is determined by that of her husband. This rule results from the legal identity of husband and wife, constituting them one person in law, and from her duty to dwell with him * * *"

That the general rule is subject to exceptions is shown in the case of *Brown v. Templeton Coal Co.* (1922), 79 Ind. App. 244, 246, 247, 137 N. E. 724, wherein it is said:

"It is fundamental that marriage imposes upon the husband the general duty of supporting his wife. This being true the husband, within certain limitations, has the right to choose the family domicil. However, the husband in the exercise of his authority to select the domicil must not lose sight of his wife's welfare and his own marital obligations toward her. Of course,

a husband could not require his wife to accompany him to a new domicile if to do so would imperil her health or safety." (Here follows list of authorities)

See also: Petty v. Petty (1908), 42 Ind. App. 443, 85 N. E. 995;
17A Am. Jur., Domicil, § 49 *et seq.*;
28 C. J. S. Domicile, § 12;
11 I. L. E. Domicile § 3.

The Indiana Election Code, as shown in subhead 7 of Burns' 29-4803, *supra*, clearly shows that a married woman is not always required to take the voting residence of her husband. The concluding portion of said subhead 7, reads as follows: "*a married woman not living in a household with her husband may establish a separate voting residence from that of her husband.*" (Our emphasis) In 19 Words and Phrases, Perm. Ed., page 698 *et seq.* the word "household" is defined as: "means a family residing under one roof.", "A household is a family living together." In Ballentine's Law Dictionary, Second Edition, page 597, "household" is defined as: "Persons who dwell together as a family." The Attorney General in 1947 O. A. G., pages 302, 303, No. 61, made this statement:

"The residence or domicile of a husband determines that of a wife until they separate with the intention of not living together in the marital relation. (Petty v. Petty [1908], 42 Ind. App. 443)."

Therefore, in answer to your first question, it is my opinion that upon the consummation of a marriage the wife thereupon takes the domicile of her husband and subject to fulfillment of the requirements of the Indiana Constitution, Art. 2, Sec. 2, *supra*, her voting residence becomes that of her husband. It is my further opinion, that a married woman may subsequent to her said marriage, change her voting residence in accordance with the authority contained in Burns' 29-4803, *supra*, in the event that she is not living in a household with her husband and has established a separate domicile together with a qualification under the requirements of the Indiana Constitution, Art. 2, Sec. 2, *supra*. Whether a wife has prop-

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erly qualified for a separate voting residence becomes a question for determination by the local election officials based on the facts of each particular case.

Let us next consider your second question, namely, "May a married man, while a student, in college, change his voting residence?" The Indiana Election Code, as shown in Burns' 29-4905, *supra*, specifically pertains to voting rights of students. In a consideration of this section particular attention is invited to the use therein of the word "*solely*." (Our emphasis) Therefore, while residence, at or near, any institution of learning does not of itself or *solely* authorize a student to acquire a voting residence at such place, nevertheless this statute contains no restriction or prohibition against any student changing his domicile, and consequently his voting residence, while he or she is a student in college. Conversely, while a student may not establish a voting residence solely by reason of attendance at such institution of learning, nevertheless Burns' 29-4905, *supra*, also provides that no student "shall be deprived of his or her vote by reason of his or her absence from the township, ward or precinct in which he or she resides." This wording infers the right of any such student to effect a change of voting residence, if necessary, or desired, and providing the other qualifications for voting are met. I find no restriction anywhere in the law against such a change being made.

Therefore, in answer to your second question, it is my opinion, that a married man while a student in college, may change his voting residence by establishing a new domicile and the fulfillment of the requirements of the Indiana Constitution, Art. 2, Sec. 2, *supra*. Here again, it becomes a question for determination by local election officials, based on the facts of the particular case, as to whether a bona fide change of voting residence has been accomplished.