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ATTORNEY GENERAL DENIES PERMISSION TO CHALLENGE OFFICIAL'S RIGHT TO HOLD OFFICE BASED ON DISPUTE CONCERNING RESIDENCE

The California Attorney General recently issued an opinion addressing a challenge to a city council member's right to hold office in light of the fact that he maintained multiple residences, some of which were outside the jurisdiction.¹

From time to time, the city council member stayed at various residences, some within and some outside the jurisdiction, due to work and family concerns. At the time of his most recent reelection, he claimed he was living in a portion of a building used as his law office. The mayor sought leave to challenge his right to hold office, claiming he lived outside the jurisdiction with his wife and child.² The city council member submitted evidence that the property where his office was located and where he claimed to live was listed on his declaration of candidacy, voter registration form, change of address form submitted to the county registrar of voters, and driver's license. He also declared under penalty of perjury that he had used the property continuously as a residence during the relevant period and submitted photos showing the property was furnished and outfitted as a residence, including “a bathroom with supplies and a bed with bedding.”

Education Code sections 35107/72103 establish that residence in the jurisdiction (or the relevant trustee area for districts that have election areas) is a requirement for holding the office of school or community college trustee. The Attorney General noted that while a person can live in multiple locations, he or she can only have one legal residence/domicile. The term “domicile” in this context has both an objective and subjective aspect, and refers to “the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he or she

¹ Opinion No. 15-1101 (September 8, 2016).

² The procedure to challenge a public official's right to hold office is known as *quo warranto*, and it requires the permission of the Attorney General. Code of Civil Procedure section 803.

returns in seasons of repose.” It has also been defined as “the place that one intentionally occupies with the intention to make it one's permanent home.”³

Here, the opinion concluded that a married person can have a domicile different from that of his family, and that there was no competent evidence contradicting the sworn declaration and evidence submitted by the council member. The Attorney General found in this instance that the fact that the building was commercial in nature did not establish that the council member had not used it as a residence. At most, the opinion states, the facts established that the council member had another residence, but not another domicile. The opinion distinguished the facts from a prior opinion permitting a challenge where a council member sold his home in the jurisdiction, signed a deed of trust showing his primary residence was in another jurisdiction which was also listed as such in the telephone directory, and did not reside in a commercial building he owned in the jurisdiction where he kept some personal possessions.⁴

It is not uncommon for Board members to acquire residences outside the boundaries of the school district they serve. Work or special circumstances may call the Board member to reside at the out-of-district residence from time to time. It is often difficult to establish which is the primary residence, and this can create a negative perception for the district and trustee if not handled properly.

We are often asked how long a Board member can remain in office after moving out of the district. Since residence in the district is a requirement of office, the Board member loses the right to hold office when he or she moves out of the district altogether. Where there are multiple residences, in most instances, the proper course of action is to resign a board seat at the point where the residence within the district is no longer intended as the permanent residence, as demonstrated by the Board member's conduct and intentions and relevant documentation.

If you have any questions concerning this or related issues, do not hesitate to contact our office.

— Grant Herndon

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³ Government Code section 244(a). Courts look at the person's acts and declarations, as well as addresses on official documentation.

⁴ 85 Ops.Cal.Atty.Gen. 90.