



The Commonwealth of Massachusetts

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Elections Division

Report to the Clerks of the Senate and
House of Representatives
and to the Joint Committee on Election Laws

By
Office Of Secretary Of The Commonwealth
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BACKGROUND

Pursuant to Section 17 of Chapter 111 of the Acts of 2014 (hereinafter referred to as the "Act") the State Secretary was tasked with conducting a study to review existing laws with regard to residency requirements for purposes of voting. As required by the enabling legislation, the State Secretary "shall make any recommendations to strengthen and clarify residency requirements as they pertain to eligibility for voting in municipal, state and federal elections and participation in town meetings, so as to ensure for the maximum extent possible that the requirements are clear, easily understood and enforceable in an efficient manner." The following is the study and recommendations prepared by the State Secretary in accordance with the Act.

DISCUSSION

Massachusetts has no state laws that provide a specific definition of "residence" or a listing of requirements for determining residency of voting purposes. There is a significant volume of case law and other precedent on the issue of residence relating to voting in both state and federal courts as well as by the State Ballot Law Commission (hereinafter referred to as "SBLC").

The SBLC is quasi-judicial body created by the legislature pursuant to chapter 55B of the General Laws. While the SBLC does not have jurisdiction over challenges to residency of voters, they do hear objections to and render decisions on issues of residency requirements for state and district candidates and, as such, have applied case law and created precedent in their decisions. The legal standards relating to residency qualifications for candidates are the same as those applied to voters. Consequently, the decisions of the SBLC form well established principles as to the requirements of residency for voting purposes in Massachusetts. Decisions of the SBLC are on file with the State Secretary.

RESIDENCE FOR VOTING PURPOSES GENERALLY

The term "residence" for voting purposes is a person's domicile. A person's "domicile" is usually the place which one considers to be his or her home and which is the center of

social, domestic and civil life. Every person has exactly one domicile at any given time and no one ever has more than one domicile for voting purposes. In any discussion of residency for voting purposes, courts use residency and domicile interchangeably, as does this study.¹

There is no statutory definition of "residence" for voting in the Massachusetts General Laws. The determination of a person's "residence" for voting purposes is fact specific and dependent upon the particular circumstances of each case. However, the legal standards used in determining residency are well established under the law. A person's residence is based on objective standards coupled with a person's intent that the location is that person's domicile for voting purposes. Example of elements supportive of a person's intent that a particular location is their residence for voting purposes include a home, civic, charitable and religious affiliations, payment of taxes and insurance, registration of automobiles, registration to vote, location of bank accounts, location of personal records, celebration of important holidays and events, bills demonstrating a continuation of a household such as telephone, water, cable, electricity and heat. Both facts and intent must be in accord.²

A person does not necessarily lose their existing domicile during a temporary absence from it, even for extended periods of time. Once a person's residence for voting purposes is established, it remains at that location unless there is compelling evidence showing it has changed. The person's intention that his or her residence has changed is one possible element of compelling evidence³.

¹ "Residence" as voting domicile: Dane v. Board of Registrars of Voters, 374 Mass. 152, 161, 371 N.E. 2d. 1358, 1364 (1978); Hershkoff v. Board of Registrars of Voters, 366 Mass. 570, 576, 321 N.E. 2d. 656, 662 (1974); Restatement (Second) of Conflict of Laws, §11, comment k (1971) (hereinafter cited as Restatement); Thomson v. Romney, SBLC 02-05 consolidated with Ginsburg v. Romney (hereinafter referred to as Romney), SBLC 02-06 (June 25, 2002) at 21-23.

"Domicile": Dane, 374 Mass. at 161-62, 371 N.E. 2d. at 1365; Hershkoff at 576; Restatement, § 11; Romney at 23.

² Dane, 374 Mass. at 162, 371 N.E. 2d. at 1365; Romney at 22.

³ Facts important, objective test, evidence: Dane at 152, 172; Hershkoff at 579; Restatement, § 12, comments c-j; § 18 comment d; §20, special note. Intent: White v. Stowell, 229 Mass. 594, 597 (1918); Hastie v. Stebbins, SBLC 91-1 (August 27, 1991).

Continuity: Dane at 162; Restatement §11 (2), comment m; § 19; Residence of origin, children: Hershkoff at 576-77; Restatement §§ 14-22.

No one loses their old residence until a new one is established. Everyone has but one residence at a time for voting purposes.

Below please find a discussion of some specific residence concepts that have been established by case law.

Students

The same general principle used to describe residence in the preceding paragraph applies to college students as well. It is illegal to apply special standards or to use different tests for students than those used for other people.⁴ Furthermore, the fact that a student lives in a dormitory or receives financial support from his parents does not prevent the student from acquiring residence in the college community.⁵

Of course in order to establish residence in a community, a student must actually eat and sleep there, not merely attend school there. This is simply the same requirement of "physical presence" which applies to everyone else.

A Massachusetts student can attend college in another Massachusetts community or in another state, be physically present there and still retain his/her residence at his/her home in Massachusetts.

The student's intent and objective evidence of such intent is extremely important when determining a student's legal domicile for voting purposes. A student's actions and not

Residence of choice, change of residence: Dane at 162; Hershkoff at 576-77; Restatement §§ 15-20. "Home": Dane, 374 Mass. at 162, 371 N.E. 2d. at 1365; Hershkoff, 366 Mass. at 577-79, 321 N.E. 2d. at 633; Restatement §§ 12, 18.

Nature of intent: Dane, 374 Mass. at 162-166, 371 N.E. 2d. at 1365-67; Hershkoff at 577-79; Coulombre v. Board of Registrars of Voters, 3 Mass. App. Ct. 206, 208-09, 326 N.E. 2d, 360, 362-63 (1975); Restatement § 18, comments b, c; see Newburger v. Peterson, 344 F. Supp. 559 (D.N.H. 1972); Putnam v. Johnson, 10 Mass. 488 (1813).

⁴ No special tests or standards: United States v. Texas, 445 F. Supp. 1245 (S.D. Tex. 1978) (three judge court), aff'd. mem. sub nom.; Symm v. United States, 439 U.S. 1105 (1979); Hershkoff at 579-80.

⁵ Dormitory residence and financial support: Hershkoff at 579-80.

Patients

The residence of patients in hospitals, nursing homes, and similar facilities is governed by the same general rules discussed earlier. Patients can establish residence at the facility where they are physically present if the facts show that they have the necessary intention of making it their home for the time being. In practice this will be true only of some long-term patients.⁶ For example, the state Appeals Court has decided that a state hospital patient living there as a condition of probation was nonetheless a legal resident there because he had not returned to his previous home for ten years and was employed and had a bank account in his new community.⁷

Many patients will remain residents of the place where they had lived prior to the facility at which they are currently being treated. This may be true even though they have not lived there for some time so long as the facts show they have no intention of making the institution their home, even for the time being.

Military Personnel

The fact that military personnel are under military orders does not prevent members of the armed forces from establishing legal residence for voting purposes in the communities where they are stationed. Again, facts which show where they intend to make their homes are decisive.⁸

Of course, this also means that if a soldier does not, in fact, intend to make his military station his home, he will retain his former residence no matter how long he may have been away on duty.

⁶ Hospitals, nursing homes, and rest homes: MGL chapter 51 § 38.

⁷ State hospital patient: Coulombre v. Board of Registrars of Voters, 3 Mass. App. Ct. 206, 326 N.E. 2d. 360 (1975).

⁸ Carrington v. Rash, 380 U.S. 89 (1965); Kennedy v. Kennedy, 10 Mass. App. Ct. 113, 406 N.E. 2d. 499 (1980) (divorce purposes); see Moor v. Harvey, 128 Mass. 219 (1880) (statute of limitations purposes).

Incarcerated Persons

Unlike any other category of citizens, persons incarcerated at state correctional institutions are presumed not to have their residence in the city or town in which the institution is located, but rather, to have retained the residence each had before incarceration.⁹

Even these incarcerated persons, however, may overcome this presumption by clear evidence that they have established a new home in the prison community. Activities such as work release spent in the vicinity of the prison or bank account there could provide such evidence.

Most incarcerated persons will not be residents of the community where the correctional facility or jail is located. However, it should be noted that since the case law establishing residency for voting purposes for incarcerated persons, state law has changed and now prohibits any person who is currently incarcerated for a felony conviction from registering and voting in Massachusetts.¹⁰

Part-Time Residents

Some people spend part of the year in one place and the remainder in another. Although they may live in more than one community, they can have only one legal residence for voting purposes. That is the place where the facts show they intend to make their home according to the basic principles discussed earlier.

It is not true that people who live part of the time in different places may simply pick one of them as their legal residence. Rather, residence is determined by examining all the factual circumstances which indicate where their home actually is.

⁹ Dane at 161-166.

¹⁰ Mass. Constitution Amended Article III.

Federal government employees stationed in Washington D.C. or overseas present a slightly different issue. If there temporarily, such as by political appointment to policy-making positions, they may well retain their original residences. On the other hand, those employed there indefinitely, such as in civil service capacities, are likely to lose their former residences. In all cases, the specific facts will be decisive. Of course, the Constitution requires elected members of Congress to be residents of the states they represent.

Citizens Living in Another Country

Massachusetts residents living in another country are eligible to vote in Massachusetts from their last residence in Massachusetts provided they have not registered to vote in any other state or district since then.¹¹

Boundary Cases

There are some instances where determining one's residence is more difficult such as when the home in which they live straddles the boundary line between two different municipalities. In such circumstances, the person's residence is in the town which contains that part of the home where he or she habitually sleeps or which is most closely connected with the primary purpose of a dwelling.¹²

Homeless Persons

Homeless persons may not be denied the right to register and vote simply because they do not have a traditional residence.

¹¹ M.G.L. c. 50, § 1.

¹² Inhabitants of Abington v. Inhabitants of North Bridgewater, 23 Pick. 170, 179 (1839); Teel v. Hamilton-Wenham Regional School District, 13 Mass. App. Ct. 345, 348-49, 433 N.E. 2d. 907, 909-10 (1982).

If a homeless person is living in a place with an identifiable address and intends to make that place his home, for the time being at least (for example, a homeless shelter, an abandoned building), that is his residence for voting purposes and he may register in the city or town where that building is located. Such an address is required by law on the affidavit of registration, the voting list, the annual street list of residents and nomination papers and petitions.

It is also possible for a homeless person who lives on a park bench to have that bench considered his or her residence.¹³

Residency Requirements for Voting in Other States

As part of this Report, a review was made of residency requirements for voting in other states throughout the United States.¹⁴ Virtually all other states have residency requirements that are fundamentally similar as those principles articulated above. These states have no specific definition of residency, rather, like Massachusetts, the determination of residency is fact specific based on a person's intent coupled with objective supporting circumstances. A few states do, however, articulate specific factual matters that will demonstrate residency, or the lack thereof.¹⁵

RECOMMENDATIONS

The legal principles in Massachusetts regarding residency requirements for voting purposes are well established. These requirements are sufficiently articulated in decisions from Massachusetts Courts as well as the State Ballot Law Commission. These legal

¹³ *Pitts v. Black*, 608 Fed. Supp. 696 (S.D.N.Y., 1984); 11 CFR Section 8.4 (2).

¹⁴ National Association of Secretaries of State: Review of State Laws Defining Residency for Voting (October 2008) http://www.nass.org/component/docman/?task=doc_download&gid=450&Itemid

¹⁵ In Louisiana, if a person claims a homestead exemption, that location becomes the person's residency for voting purposes. *La. Rev. Stat. Ann. § 18:101(B)*. In Ohio, if a person is continuously absent from the state for 4 years or more, and is not covered by certain statutory exceptions, he or she is considered to have lost their residency for voting purposes. *Ohio Rev. Code §3503.02*.

principles are clear, easily understood and enforceable in an efficient manner. It is the recommendation of the Secretary that no legislative changes are needed at this time.