

El. Bd. Op. 81-1 (Reaffirmed 3/26/08)

Summary:

Questions of elector residence for voting purposes depend on the given facts of a particular situation, taking into consideration the elector's physical presence within the ward or election district and his or her intent to make that their residence for the purpose of voting. (Issued to Ms. Cynthia Tuczynski on January 21, 1981)

This opinion was reviewed by the Government Accountability Board pursuant to 2007 Wisconsin Act 1 and was reaffirmed on March 26, 2008.

Opinion:

You indicate that you represent a patient at the Central State Hospital. Your client was a resident of Buffalo County. Since that time, your client has abandoned his Buffalo County residence and wishes to vote in the City of Waupun, Dodge County, where Central State Hospital is located. You have asked the Board to clarify that in the case of a patient at a state institution, such as Central State Hospital, the patient may retain his residence in the community where he lived prior to commitment or he may elect to acquire residence for voting purposes in the community where the facility is located.

In order for a person to be a qualified elector, he must be a United States citizen, age 18 or older residing in an election district or ward for ten days prior to the election where he intends to vote. §6.02 (1), Stats. The residence of the person is the place where his habitation is fixed, without any present intent to move, and to which when absent, he intends to return. §6.10(1), Stats. Generally, elector residence is a question of intent and physical presence. See 60 Op. Atty. Gen. 214 (1971), which discusses voter residency in terms of absentee voting and 61 Op. Atty. Gen. 245 (1972), which discusses voter residency in the context of voter registration, the reduction of the age of majority in Wisconsin and the extension of the franchise to 18 year olds by the 26th Amendment to the United States Constitution.

Because residence is dependent both upon a person's physical presence within the ward or election district and his intent to make that presence his residence for voting purposes, questions concerning residency need to be evaluated on the particular facts presented. In order to facilitate that evaluation, the legislature has attempted to address some of the more common questions which recur at each election. See §§6.02(2), 6.10, Stats. The statutes governing elector residence provide that a guest at a national or state soldier's home in this state, a guest at a home for the aged supported by benevolence, or a patient of a county home or other charitable institution, resides in the municipality where the home is located and within the ward where he sleeps, unless before becoming a guest at the home, he elects to maintain his prior residence as his voting residence. §6.10 (7), Stats.

The Elections Board has published an election and campaign manual which contains a decision table concerning elector residence. It is the Board's opinion that if a person lives in a public or private facility such as a federal or state institution, county home or hospital, nursing or group home, then that person may vote either in the ward or community in which the facility is located or

in the ward or community the person resided in prior to entering the facility. This policy is reflected in the decision table concerning elector residence in Sections 1 and 3 of the manual published by the Board.

The fact situation which you have described sets out a situation where a patient in a state institution effectively has no other residence for voting purposes, since he has no place to return to if discharged from the state institution. It is the Board's opinion that under the fact situation which you described the patient at Central State Hospital may vote in the City of Waupun since that is where he has established his legal residence. The Board expresses no opinion on the question of whether a patient of Central State Hospital could be disqualified from voting on the basis of his or her commitment. That determination must be made pursuant to §6.03 (3), Stats.

The questions concerning elector residency can be reviewed by the municipal clerk by challenging the elector's voter registration pursuant to §6.48, Stats., or challenging the elector's ballot pursuant to §6.92 et. seq., Stats. In all cases, challenging an elector's qualifications based on residency, the physical presence of the elector in the district, and his intent to fix that place as his residence for voting purposes must be evaluated in light of the facts of the given situation.