

Residency Fundamentals

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A resident is defined at 11 O.S. Section 1-102 (11) as a person whose "actual dwelling or primary residence is located within the corporate limits of the municipality." There are no court cases or attorney general's opinion interpreting Section 1.102 (11).

However, there is a long line of cases on the general definition of "residence" outside the specific context of municipal elected officials. These cases clarify that the issue of residence is one of fact and intent. In addition, a temporary absence, even over an extended period has not been held to result in a residency change. Although these cases are not directly interpreting Section 1-102 they can be used to shed light on your current issue.

Should a question arise as to whether an elected official is still a resident of the municipality, a court would likely examine whether the elected official intended to change his residency, whether he intended not to return. Also, facts of where he is registered to vote, where his mail is delivered, whether he returns to the residence etc. will all be relevant to the legal determination.

Here is a summary of several relevant cases:

1. "Residence" is the place where one's habitation is fixed without the present purpose of removing therefrom, and the term is synonymous with the term "domicile". Jones v. Burkett, 346 P.2d 338 (Okl. 1959).
2. A person's "domicile" is a place where he has his true, fixed and permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning. Suglove v. OTC, 605 P.2d 1315 (Okl. 1979).
3. Maintenance of separate home is not inconsistent with continuance of a person's legal residence in but one locality. (Okl. 1987).
4. To effect a change of domicile, there must be actual abandonment of first domicile, coupled with intention not to return to it and actual residence in another place with intention of making it a permanent home. Suglovev. OTEC, 605 P.2d 1315 (Okl. 1979).
5. A person may effect a change in his residence, in the domiciliary sense, at any time if he takes residence in a new locality and intends to remain there but either the taking of residence or the intention to remain there without the other is insufficient to create a new residence, and, until a new residence is acquired, the former does not cease to exist. Graham v. Graham, 330 P.2d 1046 (Okl. 1958).
6. Question of change in residence arising upon physical move is determined upon facts of each particular case using as indicia the habits of the person, his business and domestic relations, declarations, exercise of political rights, community activities, and other pertinent objective facts ordinarily arising out of existence of requisite intent. Graham v. Graham, 330 P.2d 1046 (Okl. 1958).
7. Dominant element in determining legal residence or domicile is intention to abandon former domicile and to acquire another without intention of returning. Moore v. Hayes, 744 P.2d 934 (Okl. 1987).
8. To effect a change of residence or domicile, there must be an actual abandonment of first

domicile coupled with an intention not to return to it, and there must be a new domicile acquired by actual residence in another place, with intention of making the last-acquired residence a permanent home. *Crosclose v. Rice*, 366 P.2d 465 (Okl. 1961).

9. Temporary absence with continuous intent to return will not deprive one of his residence, even though it is over a period of time. *Jones v. Burkett*, 346 P.2d 338 (Okl. 1959).

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