



**OFFICE OF THE STATE ATTORNEY
SIXTEENTH JUDICIAL CIRCUIT
INVESTIGATIVE DIVISION**

ORIGINAL

INVESTIGATIVE REPORT

SA CASE #: 2015-SA-00189-A-K

OTHER CASE #: 2009SA00279AK

COMPLAINANT(s): Anonymous

REFERRED BY: Anonymous

DATE OF INCIDENT: Ongoing

DATE REPORTED: 09/09/2015

SUBJECT/SUSPECT: James Robert Dean, 14 W Cypress Terrace, Key West, FL 33040

VICTIM(s): State of Florida

WITNESS(s): Supervisor of Elections

EVIDENCE: Assorted Documents

LOCATION OF OFFENSE: Key West, Monroe County, Florida

ALLEGATION/COMPLAINT: §104.15 Unqualified Electors Willfully Voting

CHARGES: False Voter Registration

DISPOSITION: Sustained, challenge voter residency with Supervisor of Elections

INVESTIGATOR: Weber, Christopher

PREDICATE/SYNOPSIS

The Office of the State Attorney, SAO, is following up on a complaint of possible voter fraud. The complaint emanated from a separate anonymous complaint as to the residency of Florida Keys Aqueduct Board member J. Robert Dean. The SAO does not have a statutory authority regarding the residency of members of the board at the FKAA. There is however, a statutory provision as to the voter requirements for residency and there may be a possible violation in that regard. Florida Statute §101.045 speaks to the legal residence where an elector may vote. and §104.15 F.S. speaks to the criminal charges regarding those who violate the former.

There was an inquiry into this same manner conducted by Investigator Weber in 2009. That investigation, 2009SA00279AK was closed as unfounded due to the statements provided by the then Supervisor of Elections Harry Sawyer in addition to a review of the allegations as they related to statute.

INVESTIGATION

J Robert Dean is the owner and operator of Dean Lopez Funeral Home, a commercial building, located at 418 Simonton St. Key West, Florida. J Robert Dean also owns the property directly behind the funeral home at 417 Bahama St. The Dean family has owned this private residence for over 60 years. The residence is split into three separate and distinct units, an upstairs apartment, a downstairs apartment and a small efficiency unit in the rear of the building. All three units are metered separately for both water and electric, and are occupied by family members.

J Robert Dean also owns a house located at 14 W. Cypress Terrace, Key Haven, and Monroe County. J Robert Dean owns this property with his wife Donna Louise Dean. This house currently has a homestead exemption attached, according to the Monroe County Property Appraisers Office,.

The Florida Division of Elections provides guidance as to the residency requirements for voters. The following is an excerpt from DE Reference Guide 003 (updated 06/2014.)

Legal residence-Permanent. *Legal residency is not defined in law. However, over the years, the courts and the Florida Department of State/Division of Elections' have construed legal residency to be where a person mentally intends to make his or her permanent residence for purposes of registration.¹ Additional evidence of such intent can come from items or activities such as obtaining a Florida driver's license and listed residential address², paying tax receipts, paying bills for residency (light, water, garbage service) and receiving mail at address, claiming the property as homestead,³ declaring the county as domicile, and doing other activities indicative or normally associated with home life.*

Therefore, legal residence is a convergence of intent and fact. Once residency is established for voting purposes, it is presumptively valid or current until evidence shows otherwise. See Op. Atty Gen. Fla. 055-216 (August 26, 1955). A business address is not a satisfactory legal residential address. However, although not the rule, if the person is able to prove residence there despite the zoning ordinance, a fact-finding body could determine that the business address is the person's legal residential address.⁴

...

A second document "DE 78-27 – June 2, 1978" provided by the division of elections includes:

The concept of "residency" or "domicile" is a subjective one to the extent that it invokes the intent of the individual. 1973 Op. Atty Gen. Fla. 073-209 (June 7, 1973). The Supreme Court of Florida has

". . .consistently held that where a good faith intention is coupled with an actual removal evidenced by positive overt acts, then the change of residence is accomplished and becomes effective. This is so because legal residence consists of the concurrence of both fact and intention. The bona fides of the intention is a highly significant factor." Bloomfield, supra, at 368.

The key element is the intent of the individual. Permanent residence is wherever a person mentally intends it to be and which can be factually supported. Such factual support may be voter registration, drivers license, tax receipts, receipt of mail, carrying on of activities normally indicative of home life, etc. See 1963 Op. Atty Gen. Fla. 063-31 (March 20, 1963). The filing of a declaration of domicile with the circuit court clerk is not conclusive and positive proof of residency. See 1970 op. Atty Gen. Fla. 070-89 (August 3, 1970). All of the foregoing do not prove place of legal or permanent residency, but may be used as evidence of that fact.

Again the "intent" element is key, there is however an additional need for the intent to be "factually supported."

Investigator Weber collected and verified numerous publicly available documents' in an effort to determine the factual support to confirm residency for either property.

09/14/2014

Investigator Weber met with J Robert Dean at his place of business at 418 Simonton St., Key West. Dean provided a brief history of his property at 417 Bahama St. Dean explained how he and his wife Donna raised their four children at that home and how the funeral home was located on the first floor in the early days. In 1963, the present Funeral home was built at 418 Simonton St. and that the properties although on separate streets have a parking lot in common. In the late 1970's, Dean and his wife decided to build a house on W. Cypress Terrace, Key Haven. Dean said the house was built for his wife as he wanted to stay in old town. He moved his family to the W. Cypress house and maintained his residence at 417 Bahama for work purposes.

According to Dean, the nature of the funeral business requires attendance at any time of the day or night. To assist in that, the 417 Bahama house provided him a place to sleep or eat when he was at work late or early in the morning. He has been using that house for that purpose since 1980, although admittedly he spends less and less time in that residence as time moves forward. When asked how many nights he has spent at 417 Bahama St. during the last six months, he said, "maybe six nights;" he also said that if he gets tired during the day he may go to the efficiency to lie down or take a nap. Dean also said that there is a small table and chair, outside the entrance, where Dean says he sometimes eats lunch.

Dean agreed to show me the residence, which was accessible through the rear exit of the funeral home. The house itself is a two-story structure split into three living spaces an upstairs and downstairs unit and efficiency in the rear. The efficiency is where J Robert Dean claims as his residence for voting purposes.

The efficiency is livable and appears clean and uncluttered, the air conditioner was running and there was some clothes hanging in area used as a closet. There were a few items in the refrigerator and dishes on the drain board next to the sink. There is running water, no real personal items and a single daybed. The entire unit is approximately 300 sq. ft.

Dean was very cooperative and forthcoming during the interview. He has been a longtime resident of Key West and has a vested interest in the community. He said he raised his family in that house and his heart has never left old town Key West. Dean continued in saying that although he spends most of his time at the 14 W. Cypress address that is his wife Donna's house. "She is my rock and my life, but that is her house." When asked where he would live when he retired he said he would stay at his Bahama St. home.

Document Type	Residency Cypress	Residency Bahama	Work Address
Florida DL D500-456-31-243-0	X		
Notice of Commencement 03/24/2004	X		
Special Warranty Deed 06/11/1992	X		
Warranty Deed 7/28/2011	X		
Mortgage Document 03/02/2012	X		
MV Title 2009 Suburban	X		
Voter Reg. Pre 2004	Subject		
Voter Reg. Post 2004		Subject	
Keys Energy	SVC/Billed	SVC only	
FCAA	SVC/Billed	SVC Only	
Funeral Director License F042969	X		
MV Title 2006 Cadillac	X		
Southernmost Assoc. LLC	X		
Homestead Exemption 1980-present	X		
FCAA Board of Directors 2004-Present		Required	
Key West Housing Authority §421,03(6)(a)		X	
Receipt of Mail	X	X	X
Home Phone Service	X		X
Home Bills	X		

DISPOSITION/CONCLUSION

The evidence or lack of evidence presented during the investigation would indicate that although J Robert Dean has a mental intent to have his residence at 417 Bahama St., Key West, Florida, there is limited factual evidence to confirm his residence at that property.

The division of elections provides the following guidance in determining residence for voting purposes. *"... legal residence is a convergence of intent and fact. Once residency is established for voting purposes, it is presumptively valid or current until evidence shows otherwise..."*

Factual evidence would support that J Robert Dean's permanent residence is 14 W. Cypress Terrace, Key Haven, Key West, FL. 33040. J Robert Dean said that he built the home at 14 W. Cypress Terrace for his wife and they both moved there in 1980, while still maintaining a residence at 417 Bahama St. This residence was mostly for work convenience in addition for his love of old town Key West. Work convenience is not evidence of permanent residence, it is by its very nature is temporary in lieu of going home to where one resides.

Since 1980, J Robert Dean has lived at 14 W. Cypress with his wife of 62 years, and admittedly eats most of his meals at that home, receives his mail and registers his vehicles at that home. In addition, since 1982 they receive a homestead exemption at that home, he entertains and by his own admission spends most of the time at that house.

There is no dispute that 417 Bahama Dr. is owned by J Robert Dean and is where he raised his family until moving to 14 W. Cypress. This same family home was split into three separate and distinct units in 1994 of which two units are now occupied by family members, leaving the third unit, an approx. 300-sq.foot efficiency apartment.

The efficiency includes a small kitchen, a bathroom, and a day bed with a small closet. The efficiency although livable at any given moment, had limited personal belongings. There were clothes in a closet that J Robert Dean maintains are for his use when he is present.

All indications are that the efficiency is being used for emergency or convenience accommodation when needed for him on a temporary basis, and does not meet the definition of permanent residency.

It should be noted, in 2009 an inquiry into this same matter by this same investigator, concluded that J Robert Dean had been using this apartment as his residence for many years and this was not a conflict for voting purposes. Then Supervisor of Elections Harry Sawyer due to what Supervisor Sawyer called "common knowledge" provided the above opinion. The investigation was closed as unfounded based on Supervisor Sawyer's knowledge of voting rules relating to residency requirements.

J Robert Dean was not deemed to be in violation of residency requirements during the 2009 investigation. and since that time, he has continued to vote and use his Bahama St. address for that purpose.

The current investigation indicates that there is probable cause to believe that J Robert Dean is in violation of §104.15 FS. However, the willfully and knowing elements cannot be established. In that, a person cannot willfully violate with knowledge, if he had been led to believe he is within his rights to be registered at the Bahama address With that in mind, the State of Florida is unable to bring charges against J Robert Dean for violation of §104.15 FS.

The Office of the State Attorney has filed a challenge with Supervisor of Elections Joyce Griffith, regarding the residency of J Robert Dean.

Sustained, this case is closed with no further action.



Approved by:
Chris Weber
Chief Investigator



Date:

Addendum

J Robert Dean: Questions answered

Does the fact that Mr. Dean claims a homestead exemption at one property determine his “domicile” for purposes of voters’ registration?

The answer to this question is No.

Florida Statutes Section 196.031(1)(a) states “[a] person who, on January 1, has the legal title or beneficial title in equity to real property in this state and who in good faith makes the property his or her permanent residence or the permanent residence of another or others legally or naturally dependent upon him or her, is entitled to an exemption ...” (Emphasis added).

Therefore, since Mr. Dean’s wife is residing in the Key Haven address he is entitled to claim an exemption regardless of *his* legal or permanent address. This is in accord with Rosenthal v. Esquinaldo, 443 So.2d 281 (3rd DAC 1983) which held that a person is a qualified elector of Monroe County notwithstanding the fact that he had applied for and received a homestead exemption in Dade County.

Do the facts support M. Dean’s Voters’ registration at the Bahama Street address?

Based on the law and facts, we are of the opinion that the facts do not support Mr. Dean’s registration at the Bahama Street residence.

Since there are no reported Florida cases concerning a violation of Florida Statute Section §104.15, “Unqualified electors willfully voting”, we turn to Florida cases where a candidate’s eligibility as a qualified elector is in issue. In Bloomfield v. City of St. Petersburg Beach, 82 So.2d 364, 369 (Fla. 1955), the Florida Supreme Court held that “establishment of one’s residence will usually depend on a variety of acts or declarations all of which must be weighed in the particular case as evidence would be weighed upon any other subject.”

Facts supporting Mr. Dean’s Key Haven address as the proper location for voters’ registration purposes are the following:

it is listed as his address on his drivers’ license, occupational license, residential telephone number; he receives his mail at Key Haven; he reports that he eats most of his meals at Key Haven; his wife lives at Key Haven; he spends most nights at Key Haven, spending only 6 nights at the Bahama address over the past 6 months; the address on Bahama is a tiny room with limited facilities; Mr. Dean keeps all of his clothing, except a change of clothes at his Key Haven address; any entertaining he does, albeit infrequent, is done at the Key Haven address; Mr. Dean was registered to vote at the Key Haven address until he changed to the Bahama St. address in 2004 and he explained to Ms. Griffith that the reason he listed the Bahama address was that he uses that address when he has to work late and he is tired and does not want to drive to Key Haven.

The Bahama street address appears to be a “*pied-a-terre*” which is defined as a small living unit usually located in a large city some distance away from an individual’s primary residence. It is where he can stay if he works late or wants to take a break during the day. It is not where he lives on a day to basis.

Is there probable cause to charge Mr. Dean with violation of Florida Statutes Section 104.15?

No.

Were Mr. Dean to have committed an offense the proper charge would be” Unqualified electors willfully voting” as proscribed in Florida Statutes Section 104.15. The text of that statute is as follows:

Whoever, knowing he or she is not a qualified elector, willfully votes at any election is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

In 2009, the issue of Mr. Dean’s registration was addressed through a previous investigation. The facts were the same and the complaints were the same. An investigation ensued and the investigation ended with the opinion of the then Supervisor of Elections regarding Mr. Dean and his being a qualified elector. The Supervisor of Elections gave the opinion that Mr. Dean was qualified. Mr. Dean has been relying on his analysis and has been voting. Consequently, up to now he has not known that he is an unqualified voter.

Remedy

The Office of the State Attorney has no jurisdiction to declare a voter improperly registered. Yet the Office may not charge Mr. Dean given that he has been led to believe he is within his rights to be registered at the Bahama address.

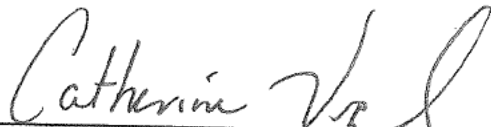
This State Attorney has the dilemma of believing that the weight of the evidence demonstrates that Mr. Dean is improperly registered at the Bahama street address yet is unable to charge a crime. Consequently, to remedy this situation, this Office of the State Attorney has chosen to file a voter challenge pursuant to Florida Statutes Section 101.111 thereby allowing a determination of Mr. Dean’s eligibility to be properly determined by an impartial board.

COPY

OATH OF PERSON ENTERING CHALLENGE OF VOTER


State of Florida
County of Monroe

I do solemnly swear that my name is Catherine Vogel; that I am a member of the Democrat Party; that I am a registered voter or pollwatcher; that my residence address is [REDACTED] Street; in the municipality of Key West, Florida; and that I have reason to believe that James Robert Dean is attempting to vote illegally and the reasons for my belief are set forth to wit: According to the attached Investigative Report, S.A. Case Number: 2015-SA-00189-A-K, it appears Mr. Dean is not registered at his correct address which is outside the limits of Key West, Florida.



Signature of Person Challenging Voter

Sworn and subscribed to before me this
17th day of September, 2015.



Clerk of Elections

The clerk of inspector shall immediately deliver to the challenged person a copy of oath of person entering the challenge, and the challenged voter shall be allowed to cast a provisional ballot.

RECEIVED
SUPERVISOR OF ELECTIONS
2015 SEP 17 AM 11:02
MONROE COUNTY
KEY WEST, FLORIDA



**OFFICE OF THE STATE ATTORNEY
SIXTEENTH JUDICIAL CIRCUIT**

INVESTIGATIVE DIVISION

INVESTIGATIVE REPORT

SA CASE #: 2009-SA-00279-A-K

OTHER CASE #: N/A

COMPLAINANT(s): Anonymous

DATE OF INCIDENT: Dates Unknown

DATE REPORTED: 06/04/2009

INVESTIGATOR: Chris Weber

REFERRED BY: Anonymous Letter

WITNESS NAME(s): Unknown

SUBJECT/SUSPECT: Robert J. Dean, 14 W. Cypress Terrace, Key West, FL 33040,

EVIDENCE: Anonymous Letter

ALLEGATION/COMPLAINT: Invalid voter registration, Invalid homestead exemption, Invalid appt. to FCAA board

CHARGES: None at this time

DISPOSITION: Closed Unfounded

PERSONS(s) INTERVIEWED: Harry Sawyer; Supv. Of Elections, Kirk Zuelch; FCAA Attorney

PERSONS(s) NOT INTERVIEWED: Robert Dean, Ervin Higgs; Property Appraiser

CHRONOLOGY OF FACTS:

The Office of the State Attorney 16th Judicial Circuit received an anonymous letter alleging improper residency requirements for an appointed member of the Florida Keys Aqueduct Authority Board of Directors. Named on the complaint is Robert Dean.

Subsequent to the receipt of the complaint, Investigator Chris Weber was assigned to follow up on the allegations for potential criminal charges.

The anonymous letter made three references that were designated for follow up as indicated below:

- Invalid voter registration
- Homestead exemption violations
- Invalid appointment to FCAA Board

The first allegation of invalid voter registration for Robert Dean was addressed through the supervisor of elections office. Investigator Weber spoke to Supervisor of Elections Harry Sawyer who stated that there is no issue regarding the voter registration address provided by Dean in that it is common knowledge that Dean maintains a residence at his place of employment. His status as a registered voter in a specific jurisdiction does not hinge on his homestead exemption. According to Supervisor Sawyer, all indications of Dean maintaining a second residence at his place of business is valid for voting purposes.

The second issue that was addressed in the correspondence is an alleged homestead exemption violation. The property appraiser Ervin Higgs is aware of the claims made by this anonymous reporter and can investigate this violation if he sees fit. This alleged violation is not germane to any of the other allegations.

The final allegation is in reference to Dean's appointment to the FCAA board of directors. The complaint alleges that Dean does not live in the district required for his appointment. The Florida Keys Aqueduct Authority has board members appointed by the governor's office. According to attorney Kirk Zuelch, who represents the FCAA, this anonymous complaint has surfaced several times over the past few years and the governors' office has been made aware of the situation. According to Zuelch on at least two separate occasions, once during the current administration and once during the Bush administration, the governor's office approved of the appointment with knowledge of the facts of residency alleged in this anonymous complaint. There is however, according to Zuelch, no written opinion available for review regarding the above allegations.

In review of the application sent to the Governor's Appointment office, Robert Dean lists his current address as 417 Bahama St., Key West, Fl. 33040. This provided address would allow Dean's appointment to the vacant district three seat.

The address of 417 Bahama St. as listed by Dean in his application, is listed by the property appraiser in the name of, Dean Donna Louise Rev Trust. This property is a three unit apartment house. According to Dean, he maintains a residence at this property due to its proximity to his business which is located behind the apartment house at 418 Simonton St., Key West.

In addition to the above residence, Dean maintains a residence at 14 West Cypress, Key West, FL 33040. This is the residence for which the homestead exemption is claimed and is in the name of, Dean James Robert and Donna S.

Investigator Weber spoke to Robert Dean who stated that although he maintains a house at 14 West Cypress the majority of his time is spent at the 417 Bahama St. address.

FINDINGS OF THE INVESTIGATION:

Based upon the lack of any definable criminal charges, any further inquiries are suspended and this anonymous complaint is closed as unfounded.

CONCLUSION NARRATIVE:

The status of the anonymous complaint has been closed as unfounded regarding criminal charges.

However, due to the non-receipt of any opinion issued by the Governor's Office this report in addition to the anonymous complaint have been forwarded to the Governor's Appointment office for review.

Chris Weber
Investigator

Date:

Approved by:
Anthony Pizzo
Chief Investigator

Date:



Dennis W. Ward
State Attorney

OFFICE OF THE STATE ATTORNEY
SIXTEENTH JUDICIAL CIRCUIT

530 Whitehead Street, Suite 201
Key West, Florida 33040

(305)292-3400
Fax (305)294-7707

June 6, 2009

Governor's Appointment Office
The Capitol
Tallahassee, Florida 32399-0001

Case # 2009-SA-00-279-AK

Whom this may concern:

The Office of the State Attorney received the enclosed anonymous letter regarding alleged violations which included an appointment made by your office.

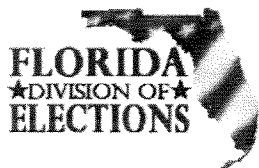
The Investigative division made inquires regarding the violations and found no basis for further criminal investigation. During our inquiry Kirk Zuelch of the Florida Keys Aqueduct Authority alluded to your office previously issuing an opinion into the appointment of Robert Dean. However, Mr. Zuelch was unable to provide a copy of that opinion.

Enclosed you will find a copy of the anonymous letter in addition to a report of the alleged violations conducted by this office.

Should your office have further questions or concerns, please feel free to contact me at any time.

Respectfully,

Chris Weber
Criminal Investigator
Investigative Division
State Attorneys Office
16th Judicial Circuit
530 Whitehead St. Suite 201
Key West, Fl. 33040
305-295-3957



VOTER RESIDENCY IN FLORIDA

DE Reference Guide 0003 (Updated 06/2014)

These guidelines are for reference only. They are not to be construed as legal advice or representation. For any particular set of facts or circumstances, refer to the applicable state, federal law, and case law, and/or consult a private attorney before drawing any legal conclusions or relying upon this information.

- **Legal residence-Permanent.** Legal residency is not defined in law. However, over the years, the courts and the Florida Department of State/Division of Elections' have construed legal residency to be where a person mentally intends to make his or her permanent residence for purposes of registration.¹ Additional evidence of such intent can come from items or activities such as obtaining a Florida driver's license and listed residential address², paying tax receipts, paying bills for residency (light, water, garbage service) and receiving mail at address, claiming the property as homestead,³ declaring the county as domicile, and doing other activities indicative or normally associated with home life. Therefore, legal residence is a convergence of intent and fact. Once residency is established for voting purposes, it is presumptively valid or current until evidence shows otherwise. See *Op. Atty Gen. Fla. 055-216 (August 26, 1955)*. A business address is not a satisfactory legal residential address. However, although not the rule, if the person is able to prove residence there despite the zoning ordinance, a fact-finding body could determine that the business address is the person's legal residential address.⁴
- **Legal residence-Temporary Out-of-County.** A person who has no permanent address in the county but intends to remain a resident of Florida and the county in which he or she is registered must be registered in the Supervisor of Elections' main office address and assigned the corresponding precinct. (Section 101.045, Fla. Stat.) The person has to have had some prior physical presence and residence in the county. Such persons though cannot vote in the municipal elections.
- **Legal residence-Mobile.** For a person with a nontraditional abode (e.g., boat, motor home, etc.) who intends and has presence in the county and intends for county to be residence county, acceptable addresses include: 1) the place where messages regularly received⁵, 2) the general delivery address at a specific post office, or 3) the address for the campground or docking site (mail is received there). For those who do not maintain a presence in the state, such persons are temporarily residing out-of-county and should be processed in the same way.
- **Legal residence-Homeless.** It is against Florida and federal laws to discriminate against a homeless person. The voter registration laws cannot be applied in a manner to deny such person the right to register to vote.⁶ Therefore, a person who is homeless or without a permanent 'traditional' home but intends to remain permanently in the locale can register using an address for: 1) place where he or she regularly receives messages, 2) the church if it agrees to accept mail or messages on the person's behalf, 3) the shelter or other local that a person frequents and could be reached, 4) the specific post office for general delivery. It may even be a specific street corner, park bench, vacant lot, etc., to where the person frequently rests or returns and intends to serve as the "home-base".⁷ The point is to be able to locate and assign a precinct to correspond with that location.

¹ See *Op. Div. Elect. Fla. 93-05, 80-27; 78-27; Walker v. Harris*, 398 So. 2d 955 (Fla. 4th DCA 1981); and *Cruickshank v. Cruickshank*, 420 So. 2d 914 (Fla. 1st DCA 1982). *Bloomfield v. City of St. Petersburg*, 82 So.2d 364 (Fla. 1955); *Ogden v. Ogden*, 33 So.2d 870 (Fla. 1947); *Herron v. Passailaigue*, 110 So. 539 (Fla. 1926).

² Under Florida law, you cannot have two valid driver licenses for different states at the same time.

³ For homestead exemption claims, "permanent residence" is defined as the place where a person has his or her true, fixed, and permanent home and principal establishment to which, whenever absent, he or she intends to return. A person can only have one permanent residence at a time. Once established, the status continues until the person shows that a change has occurred." See s. 196.012, F.S. Permanent residence is a factual determination by the property appraiser. See s. 196.015, F.S.

⁴ *Andrews v. Hartzog*, Case No. 38-2008-CA-000032 (8th Cir. Levy County, Florida 2008)

⁵ The address of a mail-forwarding service company may not necessarily be a sufficient legal residential address. In this case, it is well within the prerogative of a Supervisor of Elections' who has a duty per s. 98.045, F.S., to determine whether a person is ineligible, to question and ask a person what else the voter has done to support the voter's intent to be a permanent resident (e.g., obtained a driver's license registered in county, filed an affidavit of domicile with clerk of court, etc.) before accepting the address.

⁶ DE 89-04 and 90-07 at: http://election.dos.state.fl.us/opinions/TOC_Opinions.shtml

⁷ Note that the NVRA national mail-in registration form includes a part where an applicant can draw a map to where they live in response to non-traditional types of residential addresses. Supervisors of elections may have to work with their respective post office/voting liaison officer to prevent additional requirements that may have unintended consequences for the homeless voter applicant or registered voter.

- **Legal residence-Military /uniformed services personnel and family members (FVAP/UOCAVA).**⁸ In order to claim a specific Florida county as residence, a person:
 1. Must have or had physical presence in the state and simultaneously have the intent to remain or make the Florida his or her home or domicile.
 2. May only have one legal residence at a time, but may change residency each time he or she is transferred to a new location.
 3. Must make a conscious decision to change residency as exemplified by such acts as registering to vote, registering a car, qualifying for in-state tuition, etc.
 4. May not revert to the previous residence without re-establishing new physical presence and intent to remain or return.

Uniformed service personnel and their family members cannot arbitrarily choose which state to declare as their legal voting residence without first meeting the state's residency requirements. Marriage to an active duty member does not automatically confer the same legal residence. Florida's intent and physical presence criteria must still be met independently. A minor typically assumes either one of the parent's legal residence. Therefore, it is possible for members of the same military family to have different legal residences. Once a minor turns 18, he or she can establish his or her own residency (which can be different from either parent), provided he or she has physical presence and intent to remain or return.

The **Military Spouse Residency Relief Act of 2009**⁹ (MSRRA) gives a military spouse the right to retain residency status (for voting or taxation purposes) in the same state as the military member when the couple has to relocate from the state due to military orders. It presumes that the couple share the same domicile/legal residency state for voting (and/or taxation purposes) in the first place which is not always the case. If they didn't have the same state domicile/legal residency state to begin with or they abandoned the residency state, the military spouse (and/or dependent family member) cannot pick and choose state of residency, the person would have to independently meet the state's residency requirements before being able to retain the residency in the state before relocating.

- **Legal residence- Overseas Citizens.**¹⁰ An overseas citizen's residence is the last state in which he or she resided immediately prior to leaving the U.S. This right extends to an overseas citizen even if he or she no longer owns property or has no other ties to the last state of residence and his or her intent to return to that state may be uncertain. In the latter case, such overseas citizen is technically temporarily residing outside the county and could not vote in municipal elections.¹¹ Where a person registers/votes is a factor used to determine residency under federal, state or local tax laws except when exercising the right to vote solely in elections for federal offices. □

- **Legal residence-U.S. citizen born or living abroad.** A U.S. citizen who is born or living abroad **and** has never lived in Florida is not permitted to register or vote in Florida under current Florida law.

- **Legal residence-College/University Student.**¹² Students constitute a significant percentage of 1st time registrants/voters. A student's residential address is the address the student intends to be his or her permanent address as stated on the application—just like any other applicant who affirms indefinitely a Florida legal residential address and no matter how long he or she ends up staying (the student may leave for a summer or after 2 or 4 years). A communal university mail address is satisfactory, even if the driver's license lists a different address.¹³

⁸ Federal Voter Assistance Program at <http://www.fvap.gov> and <http://www.fvap.gov/faq.html#usmq2> and Uniform and Overseas Citizens Absentee Voting Act (UOCAVA) at <http://www.fvap.gov/resources/media/uocavalaw.pdf>

⁹ Public law 111-97 (eff. 11/15/09 http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:s475enr.txt.pdf ; Senate Report 111-46 regarding MSRRA; <http://www.gpo.gov/fdsys/pkg/CRPT-111srpt46/pdf/CRPT-111srpt46.pdf>.

¹⁰ Cf. footnote 6.

¹¹ s. 101.045, F.S.

¹² Every college and university must make registration forms available to their students. See Higher Education Act of 1998. Qualifying education institutes must provide at least once the opportunity for students to register or update their records. s. 97.0583, F.S.

¹³ That does not negate the requirement to provide a Florida driver's license or social security number (if he or she has one) for registration.

City of Key West

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Housing Authority of Key West

Members of the Board: Chairman Frank Toppino, Vice-Chairman J. Robert Dean, John G. Parks, Jr., Mary Sanchez, Roosevelt Sands, Jr.

Contact for the Board: Executive Director of the Housing Authority Manuel Castillo

Housing Authority of the City of Key West

1400 Kennedy Drive

Key West FL

Ph. (305) 296-5621

ADA Assistance:

It is the policy of the City of Key West to comply with all requirements of the Americans with Disabilities Act (ADA). Please call the TTY number at 800-955-8771 or 800-955-8770 (Voice) or the ADA Coordinator at 305-809-3731 at least five business days in advance for sign language interpreters, assistive listening devices, or materials in accessible format.

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1. [104.15 f.s.](#) **Abstract:** F.S. 104.15 104.15 Unqualified electors willfully voting.—Whoever, knowing he or she is not a qualified elector, willfully votes at any election is guilty of a felony of the third degree, punishable as provided in s. 775.082 , s. 775.083 , or s. 775.084 .History.—s. 8, ch. 26870, 1951; s. 5, ch. 65

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1. [104.041 f.s.](#) **Abstract:** F.S. 104.041 104.041 Fraud in connection with casting vote.—Any person perpetrating or attempting to perpetrate or aid in the perpetration of any fraud in connection with any vote cast, to be cast, or attempted to be cast, is guilty of a felony of the third degree, punishable as provided in s. 775.

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The 2015 Florida Statutes

Title IX

ELECTORS AND ELECTIONS

Chapter 101

VOTING METHODS AND PROCEDURE

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101.045 Electors must be registered in precinct; provisions for change of residence or name.—

(1) A person is not permitted to vote in any election precinct or district other than the one in which the person has his or her legal residence and in which the person is registered. However, a person temporarily residing outside the county shall be registered in the precinct in which the main office of the supervisor, as designated by the supervisor, is located when the person has no permanent address in the county and it is the person's intention to remain a resident of Florida and of the county in which he or she is registered to vote. Such persons who are registered in the precinct in which the main office of the supervisor, as designated by the supervisor, is located and who are residing outside the county with no permanent address in the county shall not be registered electors of a municipality and therefore shall not be permitted to vote in any municipal election.

(2)(a) An elector who moves from the precinct in which the elector is registered may vote in the precinct to which he or she has moved his or her legal residence, if the change of residence is within the same county or the precinct to which the elector has moved his or her legal residence is within a county that uses an electronic database as a precinct register at the polling place, and the elector completes an affirmation in substantially the following form:

Change of Legal Residence of Registered Voter

Under penalties for false swearing, I, (Name of voter), swear (or affirm) that the former address of my legal residence was (Address of legal residence) in the municipality of , in County, Florida, and I was registered to vote in the precinct of County, Florida; that I have not voted in the precinct of my former registration in this election; that I now reside at (Address of legal residence) in the Municipality of , in County, Florida, and am therefore eligible to vote in the precinct of County, Florida; and I further swear (or affirm) that I am otherwise legally registered and entitled to vote.

(Signature of voter whose address of legal residence has changed)

(b) Except for an active uniformed services voter or a member of his or her family and except for an elector who has moved his or her legal residence to a precinct within a county that uses an electronic database as a precinct register at the polling place, an elector whose change of address is from outside the county may not change his or her legal residence at the polling place and must vote a provisional ballot.

(c) An elector whose name changes because of marriage or other legal process may be permitted to vote, provided such elector completes an affirmation in substantially the following form:

Change of Name of Registered Voter

Under penalties for false swearing, I, (New name of voter), swear (or affirm) that my name has been changed because of marriage or other legal process. My former name and address of legal residence appear on the registration records of precinct as follows:

Name

Address

Municipality

County

Florida, Zip

My present name and address of legal residence are as follows:

Name

Address

Municipality

County

Florida, Zip

and I further swear (or affirm) that I am otherwise legally registered and entitled to vote.

(Signature of voter whose name has changed)

(d) Instead of the affirmation contained in paragraph (a) or paragraph (c), an elector may complete a voter registration application that indicates the change of name or change of address of legal residence.

(e) Such affirmation or application, when completed and presented at the precinct in which such elector is entitled to vote, and upon verification of the elector's registration, shall entitle such elector to vote as provided in this subsection. If the elector's eligibility to vote cannot be determined, he or she shall be entitled to vote a provisional ballot, subject to the requirements and procedures in s. 101.048. Upon receipt of an affirmation or application certifying a change in address of legal residence or name, the supervisor shall as soon as practicable make the necessary changes in the statewide voter registration system to indicate the change in address of legal residence or name of such elector.

History.—s. 13, ch. 3879, 1889; RS 167; s. 15, ch. 4328, 1895; GS 192; RGS 236; CGL 289; s. 4, ch. 24203, 1947; s. 11, ch. 25035, 1949; s. 1, ch. 26870, 1951; s. 4, ch. 28156, 1953; s. 7, ch. 65-60; s. 1, ch. 71-307; s. 3, ch. 77-175; s. 6, ch. 78-403; s. 4, ch. 80-292; s. 5, ch. 89-338; s. 20, ch. 94-224; s. 1391, ch. 95-147; s. 36, ch. 2001-40; s. 31, ch. 2005-278; s. 16, ch. 2008-95; s. 26, ch. 2011-40; s. 4, ch. 2013-57.

Note.—Former s. 98.32; s. 97.091.

DE 78-27 - June 2, 1978

Voter Residency
ss. 97.041, 97.091, 100.111, 166.032, F.S.

*To: Honorable J.W. "Bill" Stevens, Board of County Commissioners, Broward County Courthouse,
201 Southeast Sixth Street, Fort Lauderdale, Florida 33301*

Prepared by: Division of Elections

By your letter of May 5, 1978, the opinion of this office was requested in answer to substantially the following question:

What is the locational residency requirement for an elector in Florida?

To be eligible to register to vote in this state an individual must satisfy certain constitutional and statutory requirements. The State Constitution provides:

"Every citizen of the United States who is at least twenty-one years of age and who has been a permanent resident for one year in the state and six months in a county, if registered as provided by law, shall be an elector of that county." Fla. Const., Art. VI, s. 2.

The twenty-one year age requirement was lowered to eighteen in all elections by virtue of the Twenty-Sixth Amendment to the U.S. Constitution. (Ratified July 1, 1971). See Oregon v. Mitchell, 400 U.S. 112, 91 S.Ct. 260, 27 L.Ed.2d 272 (1971). The durational residency requirement were invalidated by court decision. Woodsum v. Boyd, 341 F.Supp. 448 (M.D. Fla. 1972); Dunn v. Blumstein, 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972).

The applicable statute relating to qualifications to register to vote is s. 97.041, F.S., which in pertinent part currently reads as follows:

"(1) Any person at least 18 years of age who is a citizen of the United States and a permanent resident of Florida and of the county where he wishes to register is eligible to register with the supervisor when the registration books are open. Upon registration, such person shall be a qualified elector of that county." (e.s.).

This law was amended in 1972 to lower the constitutional age and durational residency requirements to eighteen years and sixty days in the state and county, respectively, ch. 72-197, Laws of Florida. The sixty days was deleted in 1974. ch. 74-5, Laws of Florida. Thus, the only residency requirement for voter registration eligibility is to be a "permanent resident." s. 97.041(1), F.S.

Supplementing the registration provision is a statute relating to residency required of any person in order to vote, which states:

"No person shall be permitted to vote in any election precinct or district other than the one in which he has his permanent place of residence and in which he is registered; provided however, that persons temporarily residing outside of the county shall be registered in the precinct in which the county courthouse is located when they have no permanent address in the county and it is their intention to remain a resident of Florida and of the county in which they are registered to vote." s. 97.091(1), "F.S. (e.s.).

The courts have construed the term resident (or residency) on numerous occasions. An early decision found:

"The generally accepted definition of 'residence,' when the term is used with reference to the qualifications of voters, is synonymous with 'domicile' - that place. . .in which his habitation is fixed, without any present intention of removing therefrom." Berry v. Wilcox, 44 Neb. 82, 62 N. W. 249 (1895), cited in 1970 Op. Atty Gen. Fla. 070-97 (August 3, 1970).

Many courts have found the essential element in determining residency to be the animus manendi, i.e., the intention of remaining. Black's Law Dictionary (4th ed.). The Florida courts have found the phrase "legal resident" to be synonymous with permanent residency, domicile, or permanent abode, as distinguished from temporary residence. Bloomfield v. City of St. Petersburg, 82 So.2d 364 (Fla. 1955); Herron v. Passailaigue, 110 So. 539 (Fla. 1926).

The concept of "residency" or "domicile" is a subjective one to the extent that it invokes the intent of the individual. 1973 Op. Atty Gen. Fla. 073-209 (June 7, 1973). The Supreme Court of Florida has

". . .consistently held that where a good faith intention is coupled with an actual removal evidenced by positive overt acts, then the change of residence is accomplished and becomes effective. This is so because legal residence consists of the concurrence of both fact and intention. The bona fides of the intention is a highly significant factor." Bloomfield, supra, at 368.

The key element is the intent of the individual. Permanent residence is wherever a person mentally intends it to be and which can be factually supported. Such factual support may be voter registration, drivers license, tax receipts, receipt of mail, carrying on of activities normally indicative of home life, etc. See 1963 Op. Atty Gen. Fla. 063-31 (March 20, 1963). The filing of a declaration of domicile with the circuit court clerk is not conclusive and positive proof of residency. See 1970 op.. Atty Gen. Fla. 070-89 (August 3, 1970). All of the foregoing do not prove place of legal or permanent residency, but may be used as evidence of that fact.

Once a person has established residency for voting purposes, the absence thereof for any reason not connected with a change of domicile will not disturb that establishment. 1955 Op. Atty Gen. Fla. 055-216 (August 26, 1955). Temporary absence from the place of residency may occur, and is even accounted for by statutes, s. 97.081(1), F.S. It has previously been found that where an elector is for some reason temporarily absent from his legal residence he has not necessarily changed legal

residence, so long as it is his intention to retain his residence and return to that locale. 1953-54 Op. Att'y Gen. Fla. 75. An elector's mailing address may even be in one county without destroying his legal residency in another county. Id.

By virtue of being a registered voter in a county in this state, a person may also vote in elections regarding state, district, and federal office. A person eligible to vote in such elections is also eligible to vote in municipal elections if he resides within the corporate limits of the municipality. 1971 Op. Att'y Gen. Fla. 071-202A (August 13, 1971). See s. 166.032, F.S.

Accordingly, based on the foregoing discussion, the residency of voters is where he or she maintains a domicile with a corresponding intent that such is at that point in time his or her sole permanent residence.

It should be noted that any person's right to vote may be challenged at the polling place by any other elector (including election officials) or watchers, s. 100.111, F.S. This may be done whenever any doubt or question arises as to the challenged voter's qualifications to vote. This may include questions as to whether or not the person has maintained legal residency within the appropriate jurisdiction.

The election officials at the polling place may attempt to resolve the matter immediately by taking such appropriate action as satisfies the election clerk of that precinct and majority of the election inspectors that the person is qualified to vote. s. 101.111(3), F.S. As previously noted, residency is a voter qualification requirement in federal, state, county, and municipal elections in Florida. In the event of a question as to residency, evidence of such may be requested. Various items as discussed above may be utilized to indicate one's intent to maintain residency.

SUMMARY

A person's residency for voting purposes is where he or she intends to maintain permanent domicile at that time to the exclusion of any other location. Failure to have maintained residency in that jurisdiction may be grounds to challenge the elector at the polling place.