

## **N.D.A.G. Letter to Koppy (Aug. 3, 1987)**

August 3, 1987

Mr. Allen Koppy  
Morton County State's Attorney  
210 Second Avenue N.W.  
Mandan, ND 58554

Dear Mr. Koppy:

Thank you for your letter of July 1, 1987, concerning residency requirements for the purposes of voting in school board elections. In your letter, you provide information as to two instances where the residences of potential voters were called into question. You request an opinion from this office as to whether these persons may vote in a particular school district election where their voting residences are in dispute.

Initially, I note in your letter an indication that one couple was apparently turned away at the polling place and not allowed to vote in the school district election. North Dakota law clearly states that school district elections are to be held in compliance with the general election laws. N.D.C.C. §§ 15-28-10, 15-47-06. The procedure to follow when challenging the right of a person to vote is found at N.D.C.C. § 16.1-05-06. If a person's eligibility to vote is challenged, that person may not vote and must stand aside unless he executes an affidavit indicating he is a legally qualified elector of the precinct. The affidavit must include the name and address of the affiant and the address of the affiant at the time the affiant last voted. Upon completion of the affidavit, the challenged person must be allowed to vote. Upon subsequent review of the affidavit, a prosecution for falsely swearing in order to cast his vote may be had at the discretion of the state's attorney. N.D.C.C. § 16.105-6(1). It would be my suggestion that this procedure be followed in the future with respect to any person whose voting eligibility is challenged at the polling place during a school district election.

Along with your letter, you attached an opinion you have issued to the superintendent of the Hebron Public Schools. Your opinion appears to be in response to the first instance involving a couple apparently living in the Richardton School District who wish to vote in the Hebron School District. The materials indicate that you have reviewed all of the available facts and have determined that such persons are not residents of the Hebron School District and may not be allowed to vote in that school district election. However, the materials you have enclosed do not include an determination of the facts involving the second question and the couple who live in the Glen Ullin School District who wish to vote in the Hebron School District election.

I have reviewed your opinion holding that those who are residents of the Richardton School District may not vote in the Hebron School District. With this conclusion, I am in agreement assuming the facts that you have presented and analyzed are accurate in

terms of the appropriate residences of the persons involved. In other words, your legal conclusion is accurate so long as the factual determination as to residency is as well accurate. As there is no determination as to the facts involving the second question (people who apparently live in Glen Ullin School District wishing to vote in the Hebron School District), I am unable to make any observations concerning this matter.

Obviously, the single issue applicable to both of these situations is that of residency. This is a common issue arising during any election held within the state where residency is a requirement for voting. It is difficult to issue broad-reaching and all-encompassing legal opinions on matters involving residency as residency is a question of fact rather than of law. A determination of the questions of fact are crucial before one can apply the applicable law. A principal factual determination to be made is the place of residency as claimed by the person in question. A person's declaration of intent with respect to residency is a principal and significant fact to be considered in this process.

I am sorry that I cannot be of further assistance to you in this matter. It is undisputed that persons who are not residents of a particular school district may not vote in that school district election. The problem is in determining the residency of the persons involved and that is when the factual determinations, which you apparently have made with respect to the first instance, but which have not yet been made with respect to the second instance, are crucial in determining the legal conclusion.

Sincerely,

Nicholas J. Spaeth

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cc: Donna Reich