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June 5, 2000 (Revised June 28, 2000)

Rex Carpenter
General Manager
Nebraska Rural Electric Association
800 South 13th St.
Box 82048
Lincoln, NE 68501

Re: Director's Residence

Dear Rex:

You have asked the requirements for eligibility for election as a director of a public power district.

The statute which governs is *Neb. Rev. Stat.* § 70-610(2) which provides "[a] candidate for director shall be a registered voter residing within the chartered territory or subdivision as defined in the charter of the district or a retail customer duly certified in accordance with subsection (3) of section 70-604.03."

In order to be eligible for election as a director, a candidate must be a registered voter residing within the chartered territory or subdivision or a retail customer duly certified in accordance with the law. Chapter 70 Article 6 of the Nebraska Statutes (Public Power District Law) does not define residence; however, the Election Act, *Neb. Rev. Stat.* §§ 32-101 to 32-1551, does. *Neb. Rev. Stat.* § 70-610(1) refers to the Election Act and states in part that "[e]lections shall be conducted as provided in the Election Act." Furthermore, § 32-102 states that "[t]he Election Act shall apply to all elections held in the state unless otherwise specifically provided. . . ." Accordingly, the definition contained in the Election Act is applicable to candidates for director of public power districts.

Neb. Rev. Stat. § 32-116 (of the Election Act) defines residence as:

"(1) that place in which a person is actually domiciled, which is the residence of an individual or family, with which a person has a settled connection for the determination of his or her civil status or other legal purposes because it is actually or legally his or her permanent home and principal home, and to which, whenever he or she is absent, he or she has the intention of returning,

(2) the place where a person has his or her family domiciled even if he or she does business in another place, and

(3) if a person is homeless, the county in which the person is living. No person serving in the armed forces of the United States shall be deemed to have a residence in Nebraska because of being stationed in Nebraska."

The Nebraska Supreme Court, in *State v. Jones*, 202 Neb. 488, 275 N.W.2d 851 (1979), discussed the differences between a residence and domicile as follows:

"It is clear that a person may have two places of residence, but only one of them may be his domicile."

In *re Estate of Meyers*, 137 Neb. 60, 288 N.W. 35, this court quoted with approval the following language: "No exact definition can be given of domicile; it depends upon no one fact or combination of circumstances, but from the whole taken together it must be determined in each particular case."

It is universally held that in order to acquire a domicile by choice, these essentials must concur: (1) Residence (bodily presence) in the new locality, and (2) an intention there to remain. In other words, there must be a concurrence of the fact and the intent, the factum and animus. Act and intent must, therefore, concur, and the absence of either of these thwarts the change. In addition there must be an intention to abandon the old domicile."

Since § 32-116 uses both the term residence and domicile, in defining residence, it is clear that bodily presence at a new location is not enough. There must also be present an intention to remain at the new location.

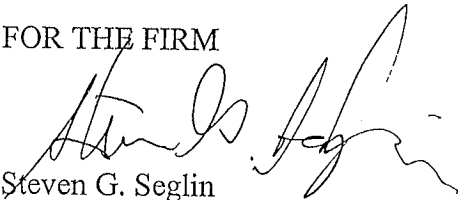
The following is an actual situation submitted by a public power district that illustrates the requirements. A director of a public power district once lived on a farm that was and still is located within the chartered territory of a public power district. The director was originally elected as a director from the farm. The director then moved to a town close by which at that time was a wholesale customer and within the chartered territory of the district. The town has a new wholesale power supplier and is no longer within the chartered territory of the district. The district however, wheels power to the town and charges the town for transmission and transformation. Notwithstanding the fact that the director lives in town, he spends most of his time on the farm where his son resides. The director continues to work on the farm, eats most of his meals on the farm, receives his mail at the farm, and even spends an occasional night at the farm. The director still considers the farm his home. There is no indication as to whether the director is a registered voter from the farm where he used to live, or from the town which is his current residence.

The director's term expires at the end of the year, and a question has arisen as to whether the director is eligible to run for reelection?

In my opinion he is not eligible to run for reelection. Even though the director may spend most of his time on the farm and may even consider it to still be his home, he does not actually reside on the farm, and has no apparent intention of making the farm his permanent home. It is possible for a person to have two residences, but a person can only be domiciled at one. A person must not only be a registered voter and reside at a location within the chartered territory of a public power district, he or she must intend to make that location his or her permanent home. In this case, the director neither resides nor is domiciled on the farm. Even if the director is registered to vote from the farm, this is not enough, in my opinion, to make him eligible for reelection. The fact that the district may wheel power to the town, does not impact whether the town is within the chartered territory of the district.

Very truly yours,

FOR THE FIRM



Steven G. Seglin

SGS:slm