

Residency, property located in two districts

Number: INFORMAL

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The Honorable George Gainer
Bay County Board of County Commissioners
Post Office Box 39
Panama City, Florida 32402

Dear Commissioner Gainer:

You ask whether you may run from either district when your residence property is divided by two county commission districts. According to your letter, your house is located in one district while part of the property is located in another district.

As you note, this office in Attorney General Opinion 63-31 recognized that this question did not appear to have been considered by the Florida courts. In the absence of such a judicial determination by the courts of this state, this office concluded that it would be inclined to follow the majority position, that is, that the electors "should be deemed residents of that electoral district wherein that portion of their domicile is located in which they perform and carry out those activities which are substantially indicative of home life, *i.e.*, sleeping, eating, etc., and in those instances where the line so finely divides the home then the elector's residence should be deemed to be in that precinct, municipality or county in which the elector sleeps." While this office recognized that there is a minority view that where a person's house is divided he or she has the opportunity to select the political subdivision in which he or she wishes to vote, the office stated its belief that to follow such a view would lead to confusion and "that the majority view and generally accepted rule quoted above provides a more orderly method for determining a person's actual domicile for voting purposes."

This office is not aware of any Florida judicial or legislative action that would alter such a conclusion. I would note that in 1974, the Supreme Court of Alabama in *Hobbie v. Vance*[1] concluded that where the dividing line between two districts was the center line of a paved road, the residence of a prospective candidate for state senate was situated on the tract of land where the candidate's house was located. While Alabama had a statute that authorized "liners," *i.e.*, those persons whose actual house was located in two districts, to select the district, the court concluded that since the house was located in one district the individual did not qualify as a "liner." The court noted that under the common law for purposes of determining the voting residence of an individual whose residence was located in two or more counties or precincts, the individual was considered to be a citizen of that territory where a majority of the rooms of the individual's house were located or where the individual slept or ate.

I would further note that in *Application of Davy*,[2] cited in Attorney General Opinion 63-31 for the minority position that an individual might claim voting residence in either district, the court was considering the problem of determining a domicile where the boundary line between two localities passed through the dwelling house of an individual. While the court doubted that New

York would draw such a fine distinction as other states had in holding that domicile rests in the locality where the main activities of a home are carried on, the court stated that such a situation was not presented in that case. In *Davy*, the house and the actual home where the individuals lived and carried on the ordinary activities of a home was wholly within the town of Colesville. The court concluded that their residence within the meaning of the Election Law therefore was in that township irrespective of the fact that their real property extended into the town of Coventry; their intent to remain voters in the town of Coventry did not control.

You refer to the treatment of homestead property as a whole, even when the property is divided by a street where the property owner owns title to the land under the roadway. However, Attorney General Opinion 96-79, which considered this issue, recognized that section 196.031, Florida Statutes, extended the homestead exemption, in addition to the home, to "contiguous real property." In determining the residence of an individual whose property is located in two electoral districts, no such provision exists.

In the absence of legislative or judicial guidance, there does not appear to be a basis for altering the conclusions reached in this office's earlier opinion on this issue. Accordingly, until this matter is resolved by the Florida courts or the Legislature, this office continues in its position that the majority view would control this issue, *i.e.*, that the residence of an elector is determined by the location of that part of the structure most closely connected with the purposes of a dwelling. In the instant inquiry, your residence would be in that district where your house is located.

I trust that these advisory comments may be of assistance to you.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tgk

[1] 294 So. 2d 743 (Ala. 1974). *And see Teel v. Hamilton-Wenham Regional School District*, 433 N.E.2d 907 (Mass. App. 1982) (school children who resided in a house bisected by the town line were found to be residents of the town in which "substantial portions" of the dwelling were located).

[2] 281 A.D. 137, 139, 120 N.Y.S.2d 450, 452 (N.Y. App. 1952).