MWD
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

June 10, 1996

To: General Counsel

From: Deputy General Counsel Setha E. Schlang

Subject: Residency Requirements of Metropolitan Directors

Issue

A Metropolitan director is planning to move to a location which is outside of Metropolitan's service area. With regard to these facts, the following questions were asked:

1. Are Metropolitan directors required to reside within Metropolitan's service area?

2. Are Metropolitan directors required to reside within the State of California?

Conclusions

1. The Metropolitan Water District Act and other applicable other state laws do not require Metropolitan directors to reside within Metropolitan's service area.[1] However, Metropolitan's member agencies may impose additional requirements, including residency requirements, on representatives they appoint to Metropolitan's board.

2. Metropolitan directors must reside within the State of California.

[1] This same conclusion was reached in the following letter and memoranda by the General Counsel: January 19, 1968 letter, with preliminary memorandum, by General Counsel John H. Lauten to Mr. Ronald Robie (MWD Opinion No. M68-003); February 5, 1968 memorandum to file by Deputy General Counsel Victor Gleason, Residence Requirements, with February 6 supplement (MWD Opinion No.; M68-008)

Analysis

The Metropolitan Water District Act ("MWD Act") does not impose any residency requirements on Metropolitan directors. Sections 51 and 52 of the MWD Act just state that Metropolitan directors are appointed to their offices by their member public agencies for either an indefinite or specified term. (MWD Act §§ 51, 52)

Other applicable state laws also do not require appointed local officers, like Metropolitan directors, to reside within the district which they serve; but, they do require that these officers reside within the State of California. The local residency issue is left to the discretion of the appointing agency. Government Code section 24001 provides that a person is not eligible for a county or district office,

> ". . . unless he or she is a registered voter of the county or district in which the duties of the office are to be exercised at the time that nomination papers are issued to the person or at the time of the person's appointment."

However, for appointed offices, section 24001 further provides that:

> "The board of supervisors or any other legally constituted appointing authority in a county or district may, if it finds that the best interests of the county or district will be served, waive the requirements of this section for an appointed county or district office."

Similarly, if a public officer moves outside of the jurisdiction of the public entity he serves, that public office will only become vacant if local residency is a legal requirement of that office. However, in all instances, the office will become vacant if the officer moves outside of the state. Subsection (e) of Government Code section 1770, provides that a public office will become vacant on the occurrence of the following event:

> "His or her ceasing to be an inhabitant of the state, or if the office be local and one for which local residence is required by law, of the district, county, or city for which the officer was chosen or appointed, or within which the duties of his or her office are required to be discharged..." (Emphasis added.)[2]

Further, pursuant to Government Code section 1062, which is applicable to Metropolitan, a municipal officer can not absent himself from the state for more than 60 days unless it is for the business of the municipality, or with the consent of the governing body of the municipality. Subsection (f) of

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[2] The California Attorney General has found that a residence requirement for election or appointment to the governing board of a public entity continues throughout the entire term of office. (75 Ops.Cal.Atty.Gen. 26, 28 (1992); 73 Ops.Cal.Atty.Gen. 197, 104 (1990); 66 Ops.Cal.Atty.Gen. 229 fn.3 (1983); 59 Ops.Cal.Atty.Gen. 627,629 (1976); 58 Ops.Cal.Atty.Gen. 888, 891 (1975).)

Government Code section 1770 then provides that a public office becomes vacant if a person is absent from the state "without the permission required by law beyond the period allowed by the law."

Setha Schlang

SES:pmsm
setsch/board/resident.doc

Attm.

January 19, 1968

Mr. Ronald B. Robie
Committee Consultant
Assembly Committee on Water
Room 2148
State Capitol
Assembly Box 38
Sacramento, California 95814

Dear Ron:

You recently asked whether former Director Reynolds was correct when he recently stated that two Los Angeles Directors were not residents of Los Angeles.

He undoubtedly was referring to Directors Aubrey E. Austin and Noah Dietrich. Both of these men have business and residence postal addresses outside the City of Los Angeles. However, their homes are located within the City of Los Angeles.

There is no requirement in the Metropolitan Water District Act that Directors reside within the agency which appoints them to the Metropolitan Board, or that they even live within the boundaries of Metropolitan. In an annotation in 120 ALR, 672, it is stated:

> "The decided weight of authority supports the view that residence within the district or other political unit for which he is elected or appointed is not a necessary qualification of an officer or candidate, in the absence of an express statutory or constitutional provision requiring such residence or that he shall be an elector of the political unit."

In the California case of Carter v. Commission on Qualifications of Judicial Appointments, et al. (1939), 14 Cal. 2d, 179, 180. At page 182 the court said:

> "At the outset it should be noted that the right to hold public office, either by election or appointment, is one of the valuable rights of citizenship.

LEGAL FILE
No. A-2-

Mr. Mechem, in his work on Public Officers, section 67, refers to the right to hold a public office under our political system as an 'implied attribute of citizenship'. The exercise of this right should not be declared prohibited or curtailed, except by plain provisions of law. Ambiguities are to be resolved in favor of eligibility to office. (People v. Dorsey, 32 Cal. 296)..."

It should also be noted that prior to 1949 Government Code Section 1770(e)probably required residence within the District. However, the section was amended in 1949 to delete the residence requirement except when otherwise required by law.

At present, it appears that two Directors representing Central Basin Municipal Water District reside outside of Central Basin but within Metropolitan. These two Directors have substantial business interests in Central Basin which undoubtedly is the reason for their appointment to represent Central Basin on Metropolitan's Board.

If you have any further questions please feel free to call me.

Sincerely,

John H. Lauten
General Counsel

GFF/js

bcc: General Manager
Executive Secretary
Asst. General Manager
Admin. Engineer

AP
March, 1947

PRELIMINARY MEMORANDUM RE RESIDENCE QUALIFICATIONS OF DIRECTORS OF THE METROPOLITAN WATER DISTRICT.

Consideration has been given to the following provisions of the Metropolitan Water District Act:

Section 6 provides, in part, as follows:

"The board of directors herein referred to shall consist of at least one representative from each municipality, the area of which shall lie within the metropolitan water district. Such representatives shall * * * be designated and appointed by the chief executive officers of municipalities, respectively, with the consent and approval of the governing bodies of the municipalities, respectively. As a member of the board of directors, each representative shall be * * * entitled to cast one vote for each ten million dollars, or major fractional part thereof, of assessed valuation of property taxable for district purposes

(Rider to be attached to "Residence Qualifications")

But see Section 1770 of Government Code, which reads, in part, as follows:

"An office becomes vacant on the happening of any of the following events before the expiration of the term:

* * * * * *

"(e) His ceasing to be an inhabitant of the State, or if the office be local, of the district, county, city, or township for which he was chosen or appointed, or within which the duties of his office are required to be discharged.

* * * * * * * "

It would appear that under this section a person who was not a resident of the Metropolitan Water District would not be eligible for appointment to the office of director, and that if a director ceased to be a resident of the District, his office would then become vacant.

Alan Patten
5-13-49

municipality" within the meaning of the Act. There was no citation of authorities with Mr. Howard's opinion. This memorandum with authorities has been prepared in anticipation that we may again be called upon to render an opinion on the subject and may desire to give the matter further consideration.

In Carter v. Commission on Qualifications of Judicial Appointments, et al., (1939) 14 Cal. (2d) 179, 182,

it was urged that the petitioner, a State senator, was ineligible for appointment to the office of Associate Justice of the California Supreme Court because of constitutional limitations. The court said:

> "At the outset it should be noted that the right to hold public office, either by election or appointment, is one of the valuable rights of citizenship. Mr. Mechem in his work on Public Officers, section 67, refers to the right to hold a public office under our political system as an 'implied attribute of citizenship'. The exercise of this right should not be declared prohibited or curtailed except by plain provisions of law. Ambiguities are to be resolved in favor of eligibility to office. (People v. Dorsey, 32 Cal. 296.) * * * "

Bigney v. Secretary of Commonwealth, 120 A. L. R. (Mass.) 669, 671, 672 (1938)

The Constitution of the Commonwealth of Massachusetts provided that the Legislature should divide the Commonwealth into eight districts; that each district should be entitled to elect one councillor; and that no person should be eligible to the office of councillor who had not been an inhabitant of the Commonwealth for the term of five years immediately preceding his election. The Constitution contained no other express provision governing the eligibility of a person for election

as councillor by the people. Held, that nonresidence in a district did not render one ineligible for election by the voters of such district. The court said:

> " * * * Had it been contemplated that councillors should necessarily be residents or inhabitants of the councillor districts respectively by which they were elected, provisions to that effect naturally would have been made as in the case of senators and representatives. * * * "

It should be noted that the Constitution further provided that in case of a vacancy in the council, the Senate and House of Representatives should "choose some eligible person from the people of the district" wherein such vacancy occurs, to fill that office. With respect to this provision, the court said:

> " * * * This requirement that the choice of an 'eligible person' shall be made 'from the people of the district wherein such vacancy occurs' would have been unnecessary if only a resident or inhabitant of the district was eligible for the office. It may well be that it was contemplated that, while the people of a councillor district might, if they saw fit, elect as councillor a person not a resident or inhabitant of that district, such a power should not be conferred when the election was to be made, not by the people of the district, but by the Senate and House of Representatives.

In the annotation to the foregoing case, the annotator states that -

> "The decided weight of authority supports the view that residence within the district or other political unit for which he is elected or appointed is not a necessary qualification of an officer or candidate, in the absence of an express statutory or constitutional provision requiring such residence or that he shall be an elector of the political unit."

A review of the cases cited in the annotation in support of the foregoing statement follows.

Jones v. Mills, et al., 11 Ill. App. 350, 351-352 (1882).

Held, that a residence in the ward which he was chosen to represent was not a necessary qualification of an alderman.

The case is very much in point in that Section 2 of Article 2 of the charter of the Town of Flora contained language quite similar to that appearing in Section 6 of the District Act.

Section 6 of the District Act provides that

"The board of directors * * * shall consist of at least one representative from each municipality, * * *. " (Underscoring supplied.)

The charter provided that

"The board of aldermen shall consist of two members from each ward * * * . " (Underscoring supplied.)

We do not have the Illinois Appellate Court Reports in our library, and therefore I have inserted the complete text of the decision in this memorandum.

"Casey, J. Appellant claims that he was, on the 16th day of March, 1882, elected an alderman from the third ward in the town of Flora, Clay county, Illinois. That the mayor and town council of the said town of Flora refused to recognize him as an alderman from the said ward because at the time of the election he was not a resident of said ward. Appellant filed a petition for a writ of certiorari, and by agreement the cause was heard in the Circuit Court of Richland county, when a judgment was rendered in favor of appellees. It is admitted that appellant received a majority of the votes cast by the legal voters residing in the third ward, and it is also admitted that appellant at the time of the election was a resident of the town of Flora, but not a resident of, or residing in the third ward. The only question for determination in this case is whether under this state of facts, appellant may be an alderman from said ward. This question is to be determined by an examination of the charter of said town. The charter of the town of Flora is a public law. The following sections of Article 2 and Article 3

are the provisions having reference to this question: Article 2, Section 1. There shall be a town council, to consist of a mayor and a board of aldermen. Section 2. The board of aldermen shall consist of two members from each ward, to be chosen for two years, and until their successors are legally qualified. Section 3. No person shall be elected to the office of mayor or alderman, unless he shall have previously resided within the town one year immediately preceding his election, be a freeholder in said town, and have the necessary qualifications to vote for State officers, and whenever the mayor or any alderman shall remove from the town or cease to be a freeholder in said town his office shall be declared vacated. Section 5. The town council shall judge of the qualifications of his own members, and determine all contested elections under this act. The latter part of section 3, article III, provides 'that each alderman shall be elected by the voters of the ward which he is chosen to represent.' Under these provisions of the charter a majority of the court hold that a residence in the ward is not a necessary qualification of an alderman, and that appellant was duly elected and should have been allowed to take and hold the office. The judgment of the writer hereof is, that the evident intention of the legislature was, that the alderman should reside in the ward he was chosen to represent. The judgment of the circuit court is reversed and the cause remanded.

Reversed and remanded."

State ex rel. Attorney General, etc. v. George,
3 Sou. (Fla.) 81, 83 (1887)

It was contended that George, though elected to the offices of marshal and collector of the Town of DeLand, was ineligible for the office because he had not resided in the town for six months prior to the election and was not a registered voter in the town at the time of his election. The State Constitution prescribed no qualifications for office except for governor, members of the Legislature, etc. Held, that George was eligible for the offices to which he was elected.

" * * * it is held to be the law that 'municipal officers may be elected from non-residents of the corporation where there is no statute or constitution prohibiting it.' See note 3, Sec. 195, 1 Dill. Mun. Corp. (3d Ed.) 222; State v. Swearingen, 12 Ga. 23, State v.

Blanchard, 6 La. Ann. 515; Com. v. Jones, 12 Pa. St. 365. * * "

Stensoff v. State ex rel. Lacour, 15 S. W. (Tex.) 1100 (1891).

Held, that since neither the Constitution nor statutes of Texas required that county officers must be voters of the county, a citizen of the State was eligible to the office of tax assessor, though not a legal voter of the county where elected, not having resided there for six months prior to the election.

In Peacock v. Larsen, 178 S. E. (Ga.) 922 (1935), it was held that in the absence of charter provision requiring residence, it was not essential that the city attorney be a resident of the city.

State ex rel. Schur v. Payne, County Clerk, 63 Pac. (2d) (Nev.) 921, 922 (1937),

it was the State's contention that Payne was not eligible for the office of Justice of the Peace of Nelson Township because at the time he filed his nomination paper he was not a resident of that township. The court said:

> "All persons are equally eligible to office who are not excluded by some constitutional or legal disqualification; and in the absence of a constitutional or statutory provision, residence within the district over which the jurisdiction of the office extends is unnecessary to eligibility. 46 C. J. 936, 938, Secs. 32, 36. The right of the people to select from citizens and qualified electors whomsoever they please to fill an elective office is not to be circumscribed except by legal provisions clearly limiting the right. Ward v. Crowell, 142 Cal. 587, at pages 590, 591, 76 P. 491. Unless, therefore, there be some provision in our Constitution or some statutory enactment, or both, clearly making residence in Nelson township a prerequisite to petitioner's eligibility to the office for which he was a candidate, he was entitled to have his named printed on the official ballots for the general election."

The court discussed various provisions of the State Constitution relating to elections and eligibility for office, and held that Payne was qualified for the office.

The annotation notes that a few decisions lend support, in varying degrees, to the view that, even in the absence of an explicit statutory or consititutional provision on the subject, residence within the political unit for which a public officer is elected or appointed is a prerequisite of eligibility. The following cited cases have been considered:

State ex rel. Malloy v. Skirving, 27 N. W. (Nebr.) 723 (1886).

At the time the defendant was elected to the office of county commissioner, he was residing in and was elected for the Second Commissioner's District of the county. Subsequently, he moved to another district. The statutes provided that the board of county commissioners consist of three persons, and that they be elected in their respective districts; that each county should be divided into three districts, and that one commissioner be elected for each of said districts by the voters of the whole county; that upon ceasing to be a resident of the district for which he was elected, the office became vacant.

Held, that the county commissioner must continue to reside in the district from which he was elected, and his removal from the district, although he remained in the county, vacated the office.

State ex rel. Johnston v. Donworth, 105 S. W. (Mo.) 1055, 1056 (1907).

Held, that statutes which provided that no person shall be an alderman in the city unless he is a resident of the ward from which he is elected, and that no person shall be elected or appointed to a city office who is not a resident of the city, etc., prescribe qualifications necessary both as to eligibility to election to office and as to holding it after election; and therefore an alderman who changed his residence to another ward was disqualified to represent the ward from which he was chosen and forfeited his right to the office. The court said:

> " * * * It is true that the aldermen act for the welfare of the city generally and pass ordinances which relate to the entire city; but it is also true that they represent in an especial manner their particular wards. It is well known that in the disbursement of city funds for lighting, fire protection, water, street improvements, and many other matters, rivalries and disputes often arise between the sections of a city, and it is important that a particular section be represented in the municipal assembly by its own residents. It is for this reason, we think, that the Legislature provided for representation by residents of the wards and election by their qualified voters. That this is so was recognized by the Supreme Court in State ex rel. Brown v. McMillan, 108 Mo. 153, 18 S. W. 784. * * *
>
> * * * * *
>
> " * * * If a person elected alderman is a resident of the ward on the day of the election, but immediately moves into another ward, he could serve his two-year term; and, if all the aldermen of a city should happen to move into one ward during their respective terms of office, they would still constitute the board of aldermen. Such contingencies are opposed to the policy of the statute, which policy is to require aldermen to be residents of the ward, not only when elected but during their terms of office. As supporting this view we refer to the decisions in State ex rel. v. Orr, 61 Ohio St. 384, 56 N. E. 14, and Commonwealth v. Yeakel, 13 Pa. Co. Ct. R. (Pa.) 615."

State ex rel Brazda, et al. v. Marsh, Secretary of State, 5 N. W. (2d) (Nebraska) 206 (1942).

(Not cited in annotation to case in 120 A.L.R.)

Under the Constitution of the State of Nebraska, a person to be eligible for the office of Governor and other designated offices must have been a resident of the State for a prescribed period of time. The office of Secretary of State was not one of the named offices. The court said, at page 214:

> "It is also true that 'In the absence of a constitutional or statutory provision residence within the district over which the jurisdiction of the office extends is unnecessary to eligibility.' 46 C.J. 938. See, also, State v. Payne, 57 Nev. 286, 63 P. 2d 921.
>
> "Further 'All persons are equally eligible to office who are not excluded by some constitutional or legal disqualification.' People v. McCormick, 261 Ill. 413, 103 N. E. 1053, 1056.
>
> "It is suggested, however, that the issues in this case are controlled by section 23, art. III of the Constitution, which reads as follows: 'All offices created by this Constitution shall become vacant by the death of the incumbent, by removal from the state, resignation, conviction of a felony, impeachment, or becoming of unsound mind.' Obviously, this provision has no possible application except to a present incumbent of a public office. True, it mentions 'removal from the state,' but it is only the removal of an incumbent of an office that creates the situation which requires application of the provisions. It is the absence of a public officer and his inability by reason thereof to discharge the duties of his office in which the public has an interest that invokes the remedy which this constitutional provision supplies. Therefore, it provides no basis from which the eligibility of a candidate may be determined prior to his election.
>
> "The conclusion follows that there being no constitutional or statutory provision requiring a stated period of residence in this state as a prerequisite to lawful candidacy for the office of secretary of state, none exists, and the questions here presented by the evidence hereinbefore set out, must be resolved in favor of Harry R. Swanson."

It should be noted, however, that earlier in the opinion the court also held that the candidate Swanson had not lost his Nebraska residence because of a temporary absence in Oregon.

Mr. Howard's opinion of ~~October~~ November 2, 1938, is well supported by the cases reviewed in this memorandum, and I concur in his opinion.

Note: I ran the American Digest System from 3rd Decennial through August, 1947, Supplement, and any applicable cases appear in this memorandum.

Decennial Digest; Title, Officers

Key No. 18, Eligibility in General

" " 22, Residence.

But see Dec. 1770 G. C. Under that section if a director should move outside the district the office would become vacant & apparently one could not be appointed a director if he lived outside the district.

AP 5/11/42

February 6, 1968

MEMORANDUM

To: File
From: Deputy General Counsel - Victor Gleason
Subject: Supplement to Residence Requirements Memorandum Dated February 5, 1968.

The following cases are listed in supplements to 120 ALR 672, but do not appear to be as much in point as the cases described in Residence Requirements Memo dated February 5.

375 SW 2d 940 (1964, Texas)
107 NW 2d 873 (1961, Michigan)
324 SW 2d 298 (1959, Texas)
275 P 2d 749 (1954, Oregon)
108 A 2d 177 (1954, New Jersey)
47 So 2d 370 (1950, Louisiana)

VG:mr

THE METROPOLITAN WATER DISTRICT

OF SOUTHERN CALIFORNIA

February 5, 1968

File Authorities - Powers Directors A(4)-7

TO General Counsel

FROM Deputy General Counsel - Victor Gleason

SUBJECT: Residence Requirements

This memorandum supplements Mr. Patton's March 1947 memorandum on residence qualifications for Metropolitan's Directors. That memo digested a 1939 ALR annotation on residence requirements for local officers (120 ALR 672).

The specific point in question is whether Metropolitan's directors must be residents of the respective member agencies which they represent.

I. California Authority

A. Judicial

Cursory search has not revealed any California Appellate Court decisions which discuss whether representatives of local agencies must be residents of their respective agency, if such requirement is not imposed by statute, charter or ordinance.

Mr. Patton's memorandum cited Carter v. Commission (1939) 14 C 2d 179,182 for the general rule that ambiguities regarding qualifications for public office should be resolved in favor of eligibility. That rule has since been cited with approval in two cases, neither of which involved residence requirements. Fort v. Civil Service Commission (1964) 61 C 2d 331, 335 invalidated a county charter provision that purported to restrict political activity by county officers. City of Berkeley v. Jensen (1947) 77 CA 2d 921,926 upheld a city charter restriction prohibiting a council member from assuming a city office if, during the member's tenure on the council, the council had increased the salary for the respective office.

B. Statutes

Since there are apparently no statutes that impose a direct local residence requirement on Metropolitan's directors, imposition of such a requirement would involve construction of the following statutes:

1. 24001 G.C.

Appears to require that Metropolitan's directors reside within Metropolitan even if they are not required to reside within their respective member agencies. However no authority has been found that Metropolitan is the kind of district contemplated by this section.

Sec. 24001 provides:

"Except as otherwise provided in Sections 27550.1 and 27641.1 of this code or in this section, a person is not eligible to a county or district office, unless at the time of his election or appointment he is . . ., a citizen of the state, and an elector of the county or district in which the duties of the office are to be exercised. However, if a duly qualified health officer is not available within a county or district, then it shall not be necessary that any person appointed to any such position be a citizen of the state or an elector of the county or district at the time of his appointment.

The assessor, tax collector, or treasurer of a district formed under the Irrigation District Law (commencing at Section 20500 of the Water Code) need not be a resident of the district in which the duties of the office are to be exercised.

The board of supervisors of any county may, if it finds that the best interests of the county will be served, waive the requirement that the administrative officer be an elector of the county." (Emphasis added)

Sec. 27550.1 exempts the office of surveyor in counties with populations under 12,500 from the requirements of 24001.

Sec. 276411 permits a county's board of supervisors to waive residence requirements for the office of county counsel in counties with populations under 11,000.

2. Section 1770 (e) G.C. implies that there is no local residence requirement absent a specific statute or ordinance.

Section 1770 provides:

"An office becomes vacant on the happening of any of the following events before the expiration of the term:

...

(e) His ceasing to be an inhabitant of the State, or if the office be local and one for which local residence is required by law, of the district, county, or city for which he was chosen or appointed, or within which the duties of his office are required to be discharged...."

The underlined portion was added by the 1949 legislature.

3. Section 275 G.C. would apparently require that Metropolitan's directors reside in their respective agencies only if they were elected to Metropolitan's Board. However, Metropolitan's directors are not elected but are "designated and appointed by the chief executive officers of municipalities respectively, with the consent and approval of the governing bodies of the municipalities, respectively". (MWD Act, Sec. 6)

An argument might be made that Metropolitan's directors are technically within the scope of Section 275 since

they are subject "to recall by the voters of the municipality from which" they are appointed (MWD Act Sec. 12). But this would require a very strained interpretation of the language of Section 275 which provides:

> "Unless otherwise specifically provided, every elector is eligible for the office for which he is an elector, and no person is eligible who is not such an elector." (Emphasis added)

C. Administrative Opinion

The Attorney General has passed on this type of problem in the following three opinions:

1. 4 AG 89 (1944) requires local residence by directors of soil conservation districts because Sec. 9121 of the Public Resources Code (now 9126) requires that they be elected. As noted above, Sec. 275 G.C. imposes a local residence requirement on all offices requiring local election.

2. 13 AG 127 (1949) imposed a local residence requirement on school district boards for similar reasons.

3. 21 AG 51 (1953) held that Municipal Court clerks and deputies need not be residents of the judicial district in which their respective court is located, because the Municipal and Justice Court Act of 1949 (71140 G.C.) imposes such a requirement on Justice Court "officers and attaches", but is silent regarding municipal court "officers and attaches".

II. Out of State Decisions

A. Ohio

In State v. Sowers (1960) 170 NE 2d 428, the Ohio Supreme Court, by a four to three decision, held that a candidate for election to the office of County Engineer need not be a resident of the county. It construed the statutory use of the term "elector" broadly to refer only to state, rather than local, residence. The critical statutory language was:

> "No person shall be elected or appointed to any office in this state unless possessed of the qualifications of an elector."

The court quoted the passage from 120 ALR 672 which Mr. Patton quoted in his 1947 memorandum, as the current general rule.

B. Colorado

Spain v. Fischahs (1960) 354 P 2d 502 construed the following language to require local residency by a candidate for election to the office of county commissioner:

> "One commissioner shall be elected from each of such districts".

C. West Virginia

Devins v. Blackburn (1957) 97 SE 2d 46, with two justices dissenting, reversed the lower court and reinstated an action to remove a member of the city council because he was not a resident of the ward he represented. The Court construed three sections of the City Charter, one of which required councilmen to be qualified voters and one of which defined voting rights in terms of the precinct level.

D. Oregon

Blyth v. City of Portland (1955) 282 P 2d 363 reversed the circuit court and held that an appointee to the City Commission of Public Docks did not have to be a resident of the city. Although the City Charter

expressly required a three-year residency in the city by such commissioners. A subsequent charter amendment, concerning city employment generally, imposed a resident requirement on city officers receiving wages, but excepted unpaid members of city commissions. Since Public Docks Commissioners were unpaid, the Court held that the charter amendment repealed the original residency requirement.

E. New Jersey

Horowitz v. Reichenstein (1954) 103 A 2d 881 held that a candidate for ward councilman must be a resident of the ward in which he seeks nomination, although he would be a councilman at large. Although the statutes were ambiguous regarding ward residence, the court construed the legislative history of the applicable statute, which set up a new city election plan, as intending to require ward residence.

F. Wisconsin

State v. Weatherly (1949) 38 NW 2d 46 reversed the lower court and upheld the right of the Police and Fire Commission to appoint a non-resident police chief. Although a statute imposed a residency requirement on deputy sheriffs and police officers, another statute expressly gave the commission authority to appoint a police chief without limitation as to residence and required that "all appointments shall be purely on merit and with a view to securing the best available appointee".

Victor Gleason

VG:mr