

**STATE OF TENNESSEE**

OFFICE OF THE  
**ATTORNEY GENERAL**  
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Opinion No. 04-120

State Senate Residency Requirements

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**QUESTION**

Where a single county lies in more than one state senatorial district, must an incumbent senator reside in the part of the county that is in the senator's district, or is the requirement met by living in any part of that county?

**OPINION**

The Senate is the sole judge of the qualifications of its members. Under Article II, § 6a, of the Tennessee Constitution, a senator must be a qualified voter of the district he or she represents throughout the senator's term. Only the Senate may determine whether to expel an individual for moving out of the district during his or her term. But, while an individual may qualify as a candidate by living within the county for a year before the election, he or she must be a qualified voter of the district he or she represents to serve in the office. Thus, under the State's voter registration laws as they currently exist, and assuming that a candidate is already a registered voter in the county where the district he or she seeks to represent is located, a candidate must be a resident of that district on the day of the election in order to be a qualified voter.

**ANALYSIS**

This opinion concerns the residency requirements for a state senator who lives in a county that lies in more than one senatorial district. The question is where a single county lies in more than one state senatorial district, whether an incumbent senator must reside in the part of the county that is in the senator's district, or whether the requirement is met by living in any part of that county. We address the question in three parts. The first issue is the effect of such a move within the county, but outside the district, on a senator's right to remain in office during a term. Under Article II, § 6a, of the Tennessee Constitution, "[e]ach district shall be represented by a *qualified voter* of that district." (Emphasis added). To be a qualified voter of the district, a person must be a registered voter. Tenn. Const. art. IV, § 1. A person must register to vote in the precinct in which the person is a resident. Tenn. Code Ann. § 2-2-107(a). Status as a qualified voter, and therefore residence within the district, must be maintained throughout the senator's term. Op. Tenn. Att'y Gen. 97-133 (September 23, 1997) (interpreting a similar requirement for representatives).

Once assembled, however, each House of the General Assembly is the sole judge of the

qualifications and election of its members. Tenn. Const. art. II, § 11; *Comer v. Ashe*, 514 S.W.2d 730 (Tenn. 1974) (the Senate is the sole and exclusive judge of the qualifications and election of its members after that particular Senate is constituted as of the day of the November general election); *State ex rel. Ezzell v. Shumate*, 172 Tenn. 451, 113 S.W.2d 381 (1938) (the House of Representatives is the sole judge of the qualifications of its members, and the courts have no jurisdiction to review a decision of the House, which held that a member of the House did not vacate his seat by the acceptance of another lucrative office, notwithstanding Article II, § 26, of the Tennessee Constitution); *Gates v. Long*, 172 Tenn. 471, 113 S.W.2d 388 (1938). Further, under Article II, § 12, of the Tennessee Constitution, each House may “with the concurrence of two-thirds, expel a member.” For this reason, it is wholly within the power of the Senate to determine whether one of its members has become disqualified for the office by moving to a part of the county that is not within his or her senatorial district. Once a state senator takes the oath of office, the only way that a member may be removed from office is by expulsion with the concurrence of two-thirds of the members of the Senate under Article II, § 12, of the Tennessee Constitution. Op. Tenn. Att’y Gen. 02-032 (March 15, 2002).

The next issue is whether an incumbent senator who has moved out of the district but remains within the county where the district is located may qualify as a candidate for reelection. Article II, § 10, of the Tennessee Constitution provides in relevant part:

No person shall be a Senator unless he shall be a citizen of the United States, of the age of thirty years, and shall have resided three years in this State, and one year in the county or district, immediately preceding the election.

Under this provision, therefore, in order to be a candidate for the office of state senator, an individual must have resided for one year “in the county or district” immediately preceding the election. Under Tenn. Code Ann. § 3-1-102(f), “[a] candidate for election to the office of senator shall be required to reside *in the senatorial district* from which such candidate seeks to be elected for one (1) year immediately preceding the election.” (Emphasis added). This Office has concluded that, under Article II, § 10, of the Tennessee Constitution, where a county lies in more than one senatorial district, a candidate for the office of state senator need only be a resident of the county for more than one year prior to election as qualification for any one of the state senatorial districts that are part of that county. Op. Tenn. Att’y Gen. 90-61 (May 16, 1990); *State ex rel. Sonnenburg v. Gaia*, 717 S.W.2d 883 (Tenn. 1986). Thus, in order to be a candidate for the office of state senator, an individual must have resided for one year in any part of a county that is part of the senatorial district. The individual is not required to have lived for a year in the part of the county that is actually in the senatorial district. To the extent that Tenn. Code Ann. § 3-1-102(f) imposes a more stringent residency requirement, it is unconstitutional.

The issue then becomes whether a senator who has moved out of the district, but still resides in the county where the district is located, must be a qualified voter of the district as required under Article II, § 6a, of the Tennessee Constitution, to appear on the ballot as a candidate for reelection.

We think a court would conclude that, in order to qualify as a candidate for the Senate, an individual must be a qualified voter — and therefore a resident — of the district, at the latest, on the day of the election. *Comer v. Ashe*, 514 S.W.2d 730 (Tenn. 1974). In that case, the Tennessee Supreme Court found that a candidate was not qualified to appear on a ballot for the State Senate because he would not meet the minimum constitutional age requirement on election day. The Court found that it had jurisdiction to determine the eligibility of a candidate for the State Senate in the general election. The Court found that the Senate's exclusive jurisdiction to determine the qualifications and election of its members under Article II, § 11, of the Tennessee Constitution applied only after the particular Senate was constituted on election day, but that the Senate could not nullify, abrogate, or alter any determination by the courts in a cause reviewed prior to the commencement date of a legislative term. 514 S.W.2d at 741.

At the same time, this Office has concluded that, under the State's voter registration laws, a candidate must be a resident of the district he or she seeks to represent for at least thirty days prior to the general election. Op. Tenn. Att'y Gen. U91-143 (November 21, 1991). This conclusion was based on the registration requirements of Tenn. Code Ann. § 2-2-109. Since that opinion was written, the registration statutes have been amended. Tenn. Code Ann. § 2-2-109(a) now provides:

A qualified voter may register or have the voter's registration altered at the commission office at any time the office is open, except that applications for registration shall not be processed for twenty-nine (29) days before an election; provided, that a qualified voter may file a mail registration form by postmarking the registration form or submitting the registration form thirty (30) days before an election. A mail registration form lacking a postmark, but signed and dated at least thirty (30) days before an election, shall be timely filed if it is received by the county election commission no later than the twenty-seventh day prior to the election. A qualified voter may correct a deficient but timely filed mail registration form if the voter comes to the commission office no later than five (5) days before the election and presents the rejection of registration notice to the administrator of elections. The administrator shall register the person to vote if the person is otherwise eligible to register. *The administrator shall be empowered to update an existing registration until no later than five (5) days before an election to place it within the correct precinct in the county when a voter changes the voter's address through the process described in § 2-7-140.*

(Emphasis added).

Additionally, both the statutes governing the procedures for voting and residency requirements have been amended since this Office opined that a candidate must be a resident of the district he or she seeks to represent for at least thirty days prior to the general election. Tenn. Code

Ann. § 2-7-112(a) now provides in part:

A voter shall sign an application for ballot, indicate the primary in which the voter desires to vote, if any, and present it to a registrar. The application for ballot shall include thereon a space for the address of the voter's current residence, and the voter shall write or print such address on the application when the voter signs it. The registrar shall compare the signature and information on the application with the signature and information on the duplicate permanent registration record. The registrar shall make a determination whether the voter's address is different from the address on the voter's permanent registration record or if the registration is in inactive status. *If the voter has changed residence, or the voter's registration is inactive, the registrar shall follow the procedures for voting pursuant to § 2-7-140.*

(Emphasis added).

Similarly, Tenn. Code Ann. § 2-7-115(a) provides that “[a] voter may vote only in the precinct where the voter resides and is registered, but if a registered voter has, at any time prior to voting, changed residence to another place inside the county, the voter must vote pursuant to the provisions of § 2-7-140.

Under Tenn. Code Ann. § 2-7-140(c), a registered voter of the county who has changed residence to a new address within the county of registration, but outside the voter's former voting precinct, must make a written affirmation of the voter's current address and that the voter is entitled to vote before voting. Upon presenting the affirmation at the new polling location and verification that the new address is within that precinct, the voter shall then be allowed to vote using the same method as any other voter at the polling place.

Thus, under the State's voter registration laws as they currently exist, and assuming that a candidate is already a registered voter in the county where the district he or she seeks to represent is located, a candidate must be a resident of that district on the day of the election in order to be a qualified voter.

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