



RESIDENCE FOR VOTING PURPOSES

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I. INTRODUCTION

The terms “residence” and “domicile” can have different meanings under the law depending upon the context in which they are used. Such differing contexts include laws affecting: taxation, court jurisdiction, divorce, automobile registration, and licensing.

This booklet is intended to provide basic information for citizens and local officials about residence for voting purposes in Massachusetts, although some principles may apply to other areas of the law involving residency. Legal citations of some of the major cases and statutes covering the topic are included after each section for easy reference.

Legal References

Inhabitant:

- *Hershkoff*, 366 Mass at 576;
- *Opinion of the Justices*, 365 Mass 661, 663 (1974).

Residence as voting domicile:

- *Dane v. Board of Registrars of Voters*, 374 Mass. 152, 161, 371 N.E. 2d. 1358, 1364 (1978);
- *Hershkoff v. Board of Registrars of Voters*, 366 Mass. 570, 576, 321 N.E. 2d. 656, 662 (1974);
- *Restatement (Second) of Conflict of Laws*, §11, comment k (1971).

Domicile:

- *Dane*, 374 Mass. at 161-62, 371 N.E. 2d. at 1365;
- *Hershkoff*, 366 Mass. at 576, 321 N.E. 2d. at 663;
- *Restatement*, § 11.

II. BASIC PRINCIPLES

Massachusetts constitutional and statutory provisions relating to voting and holding elective office reference the requirement of “residency” and “inhabitancy” as a qualification to vote and to hold elective office in the state. These terms have been the subject of much litigation throughout the years before the courts and the State Ballot Law Commission. The State Ballot Law Commission is a quasi-judicial body created by the legislature to hear objections and render decisions on issues relating to candidate qualifications and ballot access for both candidates and ballot questions.

It is well settled that a citizen’s residency or inhabitancy for voting and for holding elective office is that person’s “domicile.” For purposes of this booklet, the terms “inhabitancy,” “domicile,” and “residency” have the same meaning for such purposes. The terms “residency” or “residence” will be used predominantly throughout this publication.

Every person must have only one residence at a time for voting purposes and holding elective office. Generally, a person's residence is a person's home or where he or she is physically present, intending it to be home for at least a time. There is no clear-cut definition of residency. The concept of a person's residence is fact specific to each particular case. Consequently, a fact specific inquiry is necessary in order to determine a citizen's residency.

It is essential to understand that residence is an objective concept and not a subjective concept. That is, what counts is not where someone thinks his or her residence is or wants it to be, but rather, where the objective facts show it is. Of course, a person's statements and expressed desires, especially when they are not self-serving, may be evidence of residence, because they are facts themselves. Perhaps more important, however, is **evidence of a person's actions**. Some of those actions may be the amount of time spent in various places; former residences and voter registrations; future plans; income taxes; bank accounts; telephone listings; places of employments; and religious, social, and political affiliations.

A person's successive residences must form a continuous chain. In other words, no one loses an old residence until establishing a new one. This may mean that someone may not have set eyes on his or her residence for years in some cases. This concept is essential if everyone is always to have a residence.

A person's residence at birth is the parents' residence. A child ordinarily retains the residence of his or her parents. If the parents separate, the child retains the residence of the parent with whom he or she is living. Until they reach the age of eighteen, children, with few exceptions, cannot acquire separate residences of their own.

After turning eighteen (or before that, if one is "emancipated" from parents) a person may acquire a new residence, unless that person lacks the necessary mental capacity to do so. In order to gain such a new residence, two things are necessary:

- The person must be physically present at that place – that is, the person must eat and sleep there; and
- The person must actually intent to make the place "home" at least for the time being.

With respect to the intention to make the new place "home," several things should be noted:

- "Home" is used for this purpose in a technical sense to mean the center of a person's domestic, social, and civil life.
- A person need not intend to make the place home permanently or even for an indefinite time, since the only requirement is intent to make the place home for at least the time being. For example, a place can be a person's residence, even if he or she definitely intends to leave it next year.

- It should be stressed again that a person's intent must be determined not only by words but supported by objective factors like the examples listed previously.

Legal References

Facts, objective test, evidence:

- *Dane v. Board of Registrars of Voters*, 374 Mass. 152, 172, 371 N.E. 2d. 1358, 1370 (1978);
- *Hershkoff v. Board of Registrars of Voters*, 366 Mass. 570, 579, 321 N.E. 2d. 656, 664 (1974);
- *Restatement*, § 12, comments c-j; § 18 comment d; §20, special note.

Continuity:

- *Dane*, 374 Mass. at 162, 371 N.E. 2d. at 1365;
- *Restatement* §11 (2), comment m; § 19.

Residence of origin, children:

- *Hershkoff*, 366 Mass. at 576-77, 321 N.E. 2d. at 633;
- *Restatement*, §§ 14-22.

Residence of choice, change of residence:

- *Dane*, 374 Mass. at 162, 371 N.E. 2d at 1365;
- *Hershkoff*, 366 Mass. at 576-77, 321 N.E. 2d. at 633;
- *Restatement*, §§ 15-20.

Home:

- *Dane*, 374 Mass. at 162, 371 N.E. 2d. at 1365;
- *Hershkoff*, 366 Mass. at 577-79, 321 N.E. 2d. at 633;
- *Restatement*, §§ 12, 18.

Nature of intent:

- *Dane*, 374 Mass. at 162-166, 371 N.E. 2d. at 1365-67;
- *Hershkoff*, 366 Mass. at 577-79, 32 N.E. 2d. at 663-664;
- *Coulombre v. Board of Registrars of Voters*, 3 Mass. App. Ct. 206, 208-09, 326 N.E. 2d, 360, 362-63 (1975);
- *Restatement*, § 18, comments b, c;
- *Newburger v. Peterson*, 344 F. Supp. 559 (D.N.H. 1972);
- *Putnam v. Johnson*, 10 Mass. 488 (1813).

III. CHANGE OF RESIDENCE

Travelers

People who are simply traveling away from home do not change their residence as a result. This is true even though they may spend a considerable amount of time away before returning. This still applies if a person sells his or her home in the meantime.

Example 1:

Burt and Catherine, a retired couple in Ware, go on a long trip to stay with relatives in California for several months. Their residence remains at the house in Ware, even though others are living there.

Example 2:

Alan, a construction worker, lost his job in Lowell, where he had resided in a rented apartment. Alan terminated his tenancy, packed all his possessions in a trailer, and drove away in search of work. He stopped in several different cities, staying a few days or weeks in each to look for work. Alan's residence remains in Lowell until he eventually establishes a new home elsewhere.

Students

The same general principle used to describe residence in the preceding paragraph applies to college students as well. It is illegal to apply special standards or to use different tests for students than those used for other people. Furthermore, the fact that a student lives in a dormitory or receives financial support from their parents does not prevent the student from acquiring residence in the college community.

Of course, in order to establish residence in a community a student must actually eat and sleep there, not merely attend school there. This is simply the same requirement of "physical presence" which applies to everyone else.

A Massachusetts student can attend college in another Massachusetts community or in another state, be physically present there, and still retain his or her residence at his or her home in Massachusetts.

The student's intent and objective evidence of such intent is extremely important when determining a student's legal domicile.

It is not easy to generalize about the effect of voter registration on certain other considerations which may concern students, such as out-of-state scholarships, tuition, automobile registration, or insurance. Certainly, registering to vote is an important factor in determining residence for these purposes. On the other hand, although mere self-interest alone will not be sufficient, it is possible in some exceptional situations to have different residences for different purposes. For example, a student who registers to vote in Boston and owns a car which she garages at her parents' home in Ohio and drives it only when she is there may be under no obligation to register the car in Massachusetts. Obviously, this situation will be the exception and not the rule.

If a student asks about the consequences of voter registration, he or she should be referred to the appropriate government agency. The registrars may not advise students about such consequences before they register.

Finally, note again that students' actions and not merely their words must be considered in determining their residence. It should be no more difficult for a student to acquire

residence than for any other citizen. A declaration of intention may be decisive in a close case.

Example 3:

Dan is twenty years old and lives in a dormitory at the college he attends in Worcester. He receives financial support from his parents in New York City. He owns a car which is registered from his Worcester address and he has a Massachusetts driver's license. He has bank accounts in New York and Worcester. He often visits his parents' home on vacations. He worked at a summer job in New York last summer and filed state and federal income tax returns using his parents' New York address. He now states that he considers Worcester his home and intends to remain there until he graduates next year. Dan's residence is in Worcester.

Patients

The residence of patients in hospitals, nursing homes, and similar facilities is governed by the same general rules discussed earlier. Patients with a capacity to make a change of domicile can establish residence at the facility where they are physically present if the facts show that they have the necessary intention of making it their home for the time being. In practice, this will be true only of some long-term patients. For example, the state Appeals Court decided that a patient living in a state hospital as a condition of probation was a legal resident of the hospital, because he had not returned to his previous home for ten years and was employed and had a bank account in his new community.

On the other hand, many patients will remain residents of the places where they had lived beforehand. This may be true even though they have not lived there for some time, as long as the facts show they have no intention of making the institution their home, even for the time being.

In fact, when the registrars are informed that a person whose name has been designated "inactive" on the voting list of a city or town is in a sanatorium, hospital, rest home, convalescent home, or nursing home in another city or town, they must investigate and restore that person to the active voting list, unless the facts show that there has been a change of domicile.

Example 4:

Ellen is a tenant in a Boston apartment. While vacationing in Barnstable, she was injured in an automobile accident. She was hospitalized there, and required a long convalescence. Her residence remains in Boston, at her old address.

Example 5:

Fred lived in Boston for many years, but has been in a nursing home in Dedham for the last five years. He has no plans to return to Boston and intends the institution to be his permanent home. Fred's residence is in Dedham.

Military Personnel

The fact that military personnel are under military orders does not prevent members of the armed forces from establishing legal residence for voting purposes in the communities where they are stationed. Again, facts which show where they intend to make their homes are decisive.

Of course, this also means that if a soldier does not in fact intend to make his military billet his or her home, he or she will retain his former residence, no matter how long he or she may have been away on duty.

Example 6:

Gordon, a native of Texas, is stationed at Hanscom Air Force Base in Bedford for five years, and lives on the base. He established a bank account in town and retains another one in Texas; he has a Massachusetts driver's license. He uses his Bedford address on state and federal income tax forms. Gordon's residence is in Bedford.

Prisoners

Unlike any other category of citizens, prisoners at state correctional institutions are presumed not to have their residence in the city or town in which the institution is located, but rather, to have retained the residence each had before incarceration.

Even these prisoners, however, may overcome this presumption by clear evidence that they have established a new home in the prison community. Activities such as work release spent in the vicinity of the prison or bank account there could provide such evidence.

Most prisoners will not be residents of the community where the correctional facility or jail is located.

Example 7:

Helen, a resident of Worcester, was convicted of a crime and sentenced to three years at MCI Framingham. On furloughs, she returns to Worcester. Helen's residence remains in Worcester.

Part-Time Residents

Some people spend part of the year in one place and in another. Although some voters may live in more than one community, they can have only one legal residence. That residence is the place where the facts show they intend to make their home according to the basic principles discussed earlier.

It is not true that people who live part of the time in different places may simply pick one of them as their legal residence. Rather, residence is determined by examining all the factual circumstances which indicate where their home actually is. Although the relative amount of time people live in various places is not conclusive, it is an important factor to be considered. It is unlikely that many people will have their homes in a communities where they live only during the summer months.

Example 8:

Janice owns a summer home on Nantucket where she lives during July and August every year. The rest of the year, except for an occasional weekend, she spends in New York City where she works and where her car is registered. Janice's residence is New York City.

Residents Working Out of State

Often, employment may lead to someone working out of state for an extended but established period of time. In such circumstances, a person would most likely retain his or her original residence if he or she so intends. This is particularly true for federal government employees locating to Washington D.C. or overseas as a result of a political appointment. This may even be the case if someone owns a home in the state in which he or she is temporarily employed, but doesn't consider it his or her primary residence.

On the other hand, those employed out of state for an indefinite period of time, such as for a civil service position, would likely lose their former residency. In all cases, the specific facts will be determinative. Of course, the Constitution requires elected members of Congress to be residents of the states they represent.

Citizens Living Abroad

Massachusetts residents living outside of the United States may vote by absentee ballot from their last residence in Massachusetts, provided they have not registered to vote in any other state or district since then.

Boundary Cases

What if someone's home straddles the boundary line between two different communities?

That person's residence would be in the town which contains that part of the home where he or she habitually sleeps or which is most closely connected with the primary purpose of a dwelling.

Homeless Persons

Homeless persons may not be denied the right to register and vote simply because they do not have a traditional residence.

If a homeless person is living in a place with an identifiable address and intends to make that place his home for the time being at least (for example, a homeless shelter, an abandoned building), that is his residence for voting purposes and he may register in the city or town where that building is located. Such an address is required by law on the affidavit of registration, the voting list, the annual street list of residents, and nomination papers and petitions.

If a homeless person claims to be living in a place with no identifiable address (for example, a park bench) that person should be asked about whether there is a shelter

where he stays and can receive mail; if not, the registrars should inquire about his last residential address. That address may be considered his residence for voting purposes.

It is also possible for a homeless person who lives on a park bench to have that bench considered his or her residence, as long as the person considers the location his or her home for at least a time, returns regularly, and is able to be contacted at that location. The mail-in voter registration form includes a map where the voter can draw the location of the place where he or she lives, if that location cannot be described as a number and street or a rural route and box number. Any location identified on the map will constitute the voter's address for voting purposes.

In 2002, Congress passed the Help America Vote Act, commonly referred to as HAVA, which established new practices and procedures for the administration of federal elections, including additional requirements for voter registration.

HAVA requires that first time registrants who register by mail must provide a current and valid photo identification or copy of a current utility bill, bank statement, government check, or other government document which shows the name and address of the voter. If these items are not provided with the voter registration then the voter will be required to produce these forms of identification at the polls when voting on Election Day.

Consequently, these requirements may pose a problem for homeless citizens. In such cases, it is recommended that these individuals go in person to their local registrar to register to vote.

Legal References

No special tests or standards:

- *United States v. Texas*, 445 F. Supp. 1245 (S.D. Tex. 1978);
- *Summ v. United States*, 439 U.S. 1105 (1979);
- *Hershkoff v. Board of Registration of Voters*, 366 Mass. 570, 579-80, 321 N.E. 2d. 656-65 (1974).

Dormitory residence and financial support:

- *Hershkoff v. Board of Registration of Voters*, 366 Mass. 570, 579-80, 321 N.E. 2d. 656-65.

Physical presence:

- *Brainerd v. Hollinsworth*, No. 28193 (Mass. Super., Berkshire Oct. 25, 1977), aff'd mem., 376 Mass. 932 (1978).

Effect on other considerations:

- *Restatement*, §20, Special Note on Evidence for Establishment of a Domicile of Choice.

Hospitals and nursing homes:

- G.L. c. 51, § 38.

State hospital patient:

- *Coulombre .v Board of Registrars of Voters*, 3 Mass. Appt. Ct. 206, 326 N.E. 2d. 360 (1975).

Military personnel:

- *Carrington v. Rash*, 380 U.S. 89 (1965);
- *Kennedy v. Kennedy*, 10 Mass. App. Ct. 113, 406 N.E. 2d. 499 (1980);
- *Mooar v. Harvey*, 128 Mass. 219 (1880);
- *Dane*, 374 Mass at 163, 371 N.E. 2nd at 1366.

Prisoners:

- *Dane v. Board of Registrars of Voters*, 374 Mass. 152, 161-166, 371 N.E. 2d. 1358, 1364-67 (1978).

Working out of state:

- *Thomson v. Romney* and *Ginsburg v. Romney*, State Ballot Law Commission; Nos. 02-05; 02-06 (2002) (and cases cited therein).

Boundary cases:

- *Inhabitants of Abington v. Inhabitants of North Bridgewater*, 40 Mass. (23 Pick.) 170 (1982);
- *Teel v. Hamilton-Wenham Regional School District*, 13 Mass. App. Ct. 345, 348-49, 433 N.E. 2d. 907, 909-10 (1982);
- *Brainerd v. Hollingsworth*, No. 28193 (Mass. Super. Berkshire Oct. 25, 1977). aff'd mem., 376 Mass. 932 (1978);
- *Klein v. Alfredson* (Board of Registrars of Voters of Leominster, May 16, 1979).

Homeless persons:

- Help America Vote Act (HAVA) Pub. L. No. 107-252, 116 Stat. 1666 (2002);
- *Fischer v. Stout* 741 P. 2nd 217 (Alaska 1987);
- *Coalition For The Homeless v. Jenson*, 187 A.D. 2nd 582 (NY App Div. 1992);
- *Pitts v. Black*, 608 Fed. Supp. 696 (S.D.N.Y., 1984);
- 11 C.F.R. Section 8.4 (2).

IV. VOTER REGISTRATION

Massachusetts requires citizens who vote in its elections to register in advance with local election officials. Only residents of a city or town may be registered voters there.

For many years, Massachusetts voters had to reside in the state for one year and in the city or town for six months before registering, however, courts declared such laws to be unconstitutional in the early 1970s. Now, there is no waiting period before a Massachusetts resident may register to vote. Citizens need only be actual residents at the

time of registration. They may establish their homes and then register to vote immediately.

In order for local officials to have time to prepare the voting list for use at the polls on Election Day, registration closes 20 days before all preliminaries, primaries, elections, and town meetings. Voter registration closes 10 days before special town meetings. This is not a durational residence requirement, but only an administrative bookkeeping period. New residents may register immediately at any time.

Citizens prove their residency when registering to vote by swearing to the affirmation printed on the voter registration form. Officials may ask no further questions at the time of registration. (Additional questions may be asked of prisoners in correctional institutions and jails to allow them to overcome the presumption that they are not residents of the prison community or of a homeless person living in a place with no identifiable address.) If the voter is required to show additional proof of residency by providing identification, that proof will be required at the time of voting, rather than during the registration process.

Non-residents who register to vote knowing that they are ineligible are committing a crime punishable by a fine or imprisonment. If officials or other registered voters in that city or town suspect that someone has registered illegally or incorrectly, they may require a formal hearing before the registrars of voters by filing a written complaint.

When voters change residency within a city or town, they may update their registration by informing the board or registrars of the change on a document signed under the penalties of perjury. A voter who does so may then vote at his or her new address immediately if he or she notifies the registrars before the registration deadline. If the voter does not notify the registrars, the voter may continue to vote within the city or town in all elections from his or her old address until the change is made, either through the annual street listing or a new voter registration form.

Example 9:

Kathleen and Jen, a married couple, moved into their Winthrop apartment ten days before the annual town election. Neither has lived in Winthrop before. They may register to vote at once, but they will not be able to vote in the town election, because registration for that election closed twenty days before Election Day.

Example 10:

Janice, the summer homeowner on Nantucket in Example 8, sends in a completed mail-in registration form. Although the clerk suspects she is a New York resident, she must add Janice to the voter list; however, the clerk or any other registered voter may file a complaint and have Janice summoned to a full hearing at which the registrars of voters will hear all the facts and make a decision about her true residence.

Legal References

Voter residence:

- Mass. Const. Amend. Art. 3;
- G.L. c. 51, § 1.

No durational residence required:

- G.L. c. 51, § 1;
- *Dunn v. Blumstein*, 405 U.S. 330 (1972);
- *Burg v. Canniffe*, 315 F. Supp. 380 D. Mass. (1970) aff'd mem. 405 U.S. 1034;
- *Singer v. Board of Election Commissioners*, No. 70-1404-F (D. Mass. Apr. 10, 1972).

Close period:

- G.L. c. 51, §§ 26, 29.

Proof of residence:

- G.L. c. 51, §§ 42-49;
- *Dane v. Board of Registrars of Voters*, 374 Mass. 152, 166-73, 371 N.E. 2d 1358, 1367-71 (1978);
- Dept. of Secretary of State memorandum, Feb. 6, 1978;
- Help America Vote Act (HAVA) Pub. L. No. 107-252, 116 Stat. 1666 (2002).

Registration crimes:

- G.L. c. 56, §§ 6-8.

Move within community:

- G.L. c. 51, §§ 3, 37.

V. REMOVING AND RESTORING VOTERS

Voter registration in Massachusetts is permanent. This means that once voters register, their names should appear on the voting list for every election until they move away or die.

The board of registrars may remove voters' names from the list of voters only if: the registrars have received written communication from the voter indicating that he or she no longer resides in the city or town or no longer wishes to be a registered voter; the voter has died; the voter is found to be ineligible to be registered in the community after a hearing held under sections 48 and 49 of chapter 51 of the General Laws, the registrars receive notice from the Registry of Motor Vehicles that the voter has moved out of the city or town, or the voter has been on the inactive voter list and failed to vote in two consecutive biennial state elections.

Voters who are removed from the voter list must be sent a final notice of removal confirming the change.

Voters whose names have been placed on the inactive voter list can be restored to the active voters list at any time before Election Day by establishing that they have continuously resided in the city or town. Usually, voters do this by returning a confirmation notice, returning a local census form, or signing a nomination paper or initiative petition. It is not necessary to re-register, though submitting a new voter registration form would restore a voter to the active voter list.

On Election Day, the presiding officer at the polls will confirm the identity of an inactive voter by requesting that the voter present identification bearing the voter's name and current address and by requiring the voter to sign an affirmation of current and continuous residence. Inactive voters who are unable to provide identification must still be allowed to vote, though they must cast a challenged ballot. Once the affirmation has been completed, the voter becomes an active voter again.

Voters who have been removed from the voter list due to inactivity may cast provisional ballots, as long as they have continuously resided in the city or town since last registering to vote. Unless the local election official finds evidence, other than failure to respond to the annual street listing, that the voter has moved out of the city or town, the provisional voter must be restored to the active voter list and the ballot should be counted.

All voters should vote in the precinct where they are listed on the voting list, or, if they are not listed, in the precinct where they believe they should be listed. In state elections and primaries, voters who have moved out of the city or town where they are registered to another community in Massachusetts and who have not registered to vote at their new residence may vote in the precinct where they are listed for up to six months after moving. Once a voter registers to vote in a new city or town, he or she cannot return to vote in the old community. As such, voters who move to another city or town after the voter registration deadline are advised to wait to re-register until after the election.

Example 11:

Monica, a resident and registered voter in Pittsfield, was away when the annual street listing arrived in the mail. When she returned home, she misplaced the census form and took no action in response to the confirmation notice that she received in June. When she arrived to vote on Election Day, her name was not on the active voter list. Her current driver's license shows she is still a resident of Pittsfield and her name appears on the list of inactive voters. Monica must be allowed to vote if she signs the affirmation of current and continuous residence and is restored to the active voter list.

Legal References

Removing name:

- G.L. c. 51, § 38.

Death notice:

- G.L. c. 51, § 14.

Other community registration notice:

- G.L. c. 51, § 46A.

Complaint and hearing:

- G.L. c. 51, §§ 47B, 48, 49.

Street list:

- G.L. c. 51, §§ 4, 6, 7, 10A, 14A, 14B.

Drops:

- G.L. c. 51, § 37.

Pre-election restoration:

- G.L. c. 51, §§ 35, 38.

VI. RUNNING FOR AND HOLDING OFFICE

To appear on the ballot for most public offices in Massachusetts, a candidate must be a registered voter and, therefore, a resident. With the exceptions of the offices of representative in Congress, governor's councillor, sheriff, register of probate, clerk of courts, and county commissioner, candidates must be residents in the district or community from which they seek election by Election Day. Local charters often contain the requirements for local offices.

Candidates at state primaries and elections must prove their voter registration at the time they file nomination papers with the Elections Division by filing a certificate (usually printed on the nomination papers) signed by the registrars of voters of their home community.

Unlike voters, candidates for some federal and state offices must be residents for a minimum period of time. For instance, the United States Constitution requires that members of both the Senate and the House of Representatives be inhabitants of the states they represent at the time of election. The Massachusetts Constitution requires that the governor and lieutenant governor have been residents of Massachusetts for 7 years, while other constitutional officers and state senators must have been residents for 5 years. State representatives must have been residents of their districts for one year when elected. Unless otherwise noted, residency requirements may generally be counted back from the date of election.

A registered voter of the relevant district may claim that a candidate does not meet the residence requirements by filing a written objection within the time allowed. The objection must be filed with the board of registrars for local elections, or with the

secretary of the commonwealth for state elections. The board of registrars or State Ballot Law Commission must hold a hearing and the losing party may appeal to the superior court. A decision that a candidate does not meet the residence requirement will prevent the candidate's name from appearing on the ballot.

If an elected town official moves out of town, the office automatically becomes vacant. If the official serves as a member of an elected board, the board may vote to declare the position vacant. Any registered voter in the town may question the official's residence in a voter registration challenge proceeding before the local registrars of voters. In this or any other situation where a public official may lack the necessary legal qualifications to hold office, the attorney general may sue to determine the issue. The lawsuit is called a civil action in the nature of quo warranto.

Example 13:

Orrin is a candidate for selectman in Weston and spends much of his time at a house he owns in Florida. Pam is a registered voter in Weston and suspects that Orrin's residence is in Florida. The best procedure for Pam is to file a written objection to Orrin's nomination for the town election ballot with the town clerk within two working days (48 weekday hours) after the deadline to file nomination papers with the clerk and present her evidence to the Weston registrars of voters at a hearing.

If Pam fails to do this and Orrin is elected, Pam may file a written complaint against Orrin's voter registration with the board of registrars or may ask the attorney general to begin court action.

Legal References

Candidate to be registered voter:

- G.L. c. 41, § 1; G.L. c. 53, § 48.

Objections:

- G.L. c. 53, §§ 11, 53A, 55;
- G.L. c. 55B;
- 950 C.M.R. 59.00.

Moving out of town:

- G.L. c. 41, § 109.

Quo warranto:

- G.L. c. 249, § 9.

IV. REGISTRATION CHALLENGES

Any registered voter may challenge another voter's registration as illegal or incorrect.

Complaint

If the local board of registrars of voters has probable cause to believe a voter made a false statement in his or her affidavit when the person registered the registrars may prepare a complaint stating their reasons.

If any other registered voter of the city or town believes a voter is illegally or incorrectly registered, he or she may file a sworn complaint with the registrars listing the reasons. This complaint must be filed at least 14 days before a city primary, preliminary, or election and 4 days before a town preliminary, primary, election, or town meeting.

Summons

The registrars must examine each complaint they receive. If they are satisfied that there are sufficient grounds against the voter for a hearing they will summon the voter to appear before them at a certain time and place before the next primary, preliminary, election, or town meeting.

The summons must explain the complaint which was made against the voter and must include a copy of the sections of Massachusetts General Law describing the hearing procedure.

A qualified officer must serve the summons not more than 14 days and at least 2 days before the day named for the voter to appear. The officers must either serve it on the voter personally or leave it at the voter's residence. If the officer cannot determine the voter's current address, he or she must serve the summons at the voter's last known address. In any case, before the day of the hearing the officer must have presented a written statement to the registrars explaining how the summons was delivered.

Hearing

When the voter appears before the registrars at the hearing, he or she will be examined under oath. Any member of the board of registrars may administer oaths to witnesses who appear before them at such a hearing. The registrars must receive any evidence that may be offered. All parties may be represented by counsel.

The burden of proof is on the person filing the complaint. She or he must submit evidence showing the voter to be incorrectly or illegally registered in the city or town.

If the board of registrars has made the complaint, it is advisable for the board to select an independent person to present the evidence to the board at the hearing. If this is not possible and one of the registrars presents the evidence at the hearing, he or she should not be involved in the decision making process.

If a voter fails to appear at the hearing and the complainant produces enough evidence to show the registrars that the voter should not be registered, the voter's name shall be removed from the list of voters; however, the hearing must be reopened if the voter appears before the registrars prior to the next election or town meeting and makes an acceptable explanation of why she or he did not appear.

If at the hearing the registrars are satisfied that the voter is properly registered and qualified, they will enter a statement of their findings. If they are satisfied that the person is a qualified voter in the city or town but is illegally or incorrectly registered in a ward or precinct, they must correct the register.

Appeal

The losing party may appeal the registrars' decision to superior court in a civil action against the registrars.

Legal References

- G.L. c. 51, §§ 47B, 48, 49;
- G.L. c. 233, § 8.