



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 29, 1992

Honorable Charles D. Johnson
County Attorney
Dimmit County Courthouse
Carrizo Springs, Texas 78834

Letter Opinion No. 92-19

Re: Whether a trustee of an independent school district vacates her office by moving outside of the county in which the district is located (ID# 16011)

Dear Mr. Johnson:

You have asked about the status of a woman who had been elected to the board of trustees of the Carrizo Springs Independent School District and who, less than six months after being elected to the board, has "relocated her residence," either temporarily or permanently, to a place outside of the county. You state that the woman's spouse continues to reside in the county, and that you do not know whether the woman intends to return to the county.¹

Article XVI, section 14 of the Texas Constitution states as follows:

All civil officers shall reside within the State; and all district or county officers within their districts or counties, and shall keep their offices at such places as may be required by law; and failure to comply with this condition shall vacate the office so held.

Tex. Const. art. XVI, § 14. Pursuant to this constitutional provision, school board trustees are required to reside within the school district. *Prince v. Inman*, 280 S.W.2d 779, 781 (Tex. Civ. App.--Beaumont 1955, no writ); see *Whitmarsh v. Buckley*, 324 S.W.2d 298, 302 (Tex. Civ. App.--Houston 1959, no writ); Attorney General Opinion O-1534 (1939) at 1. If a school district trustee moves her place of residence, the trustee position she held is vacated. See *Prince*, 280 S.W.2d at 781; *Whitmarsh*, 324 S.W.2d at 301; Attorney General Opinion O-1534 at 2.

¹For purposes of this letter opinion, we assume that the boundaries of the Carrizo Springs Independent School District do not extend beyond the boundaries of Dimmit County.

Thus, to determine whether a trustee position is vacant, one must determine the elected trustee's place of residence. In Texas, "residence" is defined in terms of a person's fixed place of habitation, from which the person has no present intention of moving. See *Prince*, 280 S.W.2d at 782; Attorney General Opinion JM-1223 (1990) at 4-5 (stating that in those places that legislature statutorily has defined "residence," it generally has equated term with "domicile"). Accordingly, a person loses her residence when the person leaves her permanent home and moves to another place with no present intention to return to the former abode. *Prince*, 280 S.W.2d at 782. On the other hand, if a person moves to a new location only temporarily, presently intending to return to the previous place of habitation, she does not lose her residence. *Id.*; see Attorney General Opinions O-3370 (1941) at 2; O-1534 at 2. Thus, "[t]he determination of a person's residence is largely dependent upon the intention of the person in question, to be determined, not only by his express intentions, but by the facts and circumstances, and resolves itself into a question of fact." Attorney General Opinion O-3370 at 2.

You state that you do not know whether the trustee intends to return to Dimmit County. Without such knowledge, or without the knowledge of facts and circumstances that would indicate her intentions, it is impossible to determine the trustee's correct place of residence. Consequently, we cannot ascertain whether her position on the board of trustees is vacant.

S U M M A R Y

Under article XVI, section 14 of the Texas Constitution, a trustee on the board of trustees of an independent school district vacates her office if she relinquishes her residence in the district by moving to a location outside the district and presently intends to change her residence. If, however, she has left the district only temporarily without intending to change her residence, the trustee position she holds is not vacant.

Yours very truly,



Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee