



FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

January 4, 2016

The Honorable Charles L. Overturf, III
Supervisor of Elections, Putnam County
2509 Crill Avenue, Suite 900
Palatka, Florida 32177

Re: DE 16-01 Residency—
Establishing Residency—§§ 97.041,
97.051, 98.045, 98.065, and 98.075,
Florida Statutes

Dear Supervisor Overturf:

As the supervisor of elections for Putnam County, Florida, you have requested an advisory opinion from the Division of Elections regarding whether a person may legally register to vote in Putnam County even though he claims a homestead exemption in a different county. As the supervisor of elections, you have a statutory duty under sections 98.045, 98.065, and 98.075, Florida Statutes, to determine the eligibility of voter registration applicants and registered electors. Accordingly, the Division has the authority to issue you an advisory opinion pursuant to section 106.23(2), Florida Statutes.

FACTS

You write in your request that you are aware of a person who desires to register to vote in Putnam County. You state that this person has been a “resident” in Putnam County “since childhood,” and that he has owned a house in Putnam County for about 30 years and is active in the community. This person owns another house in St. Johns County, where he claims homestead exemption pursuant to Florida law. You ask whether the person is legally permitted to register to vote in Putnam County.

ANALYSIS

Florida law requires that in order to register to vote in a particular county, the voter must first be a “legal resident” of that county. See § 97.041(1)(a)4., Fla. Stat. (2015). “Legal resident” and “legal residence” are not defined in the Florida Election Code, but the Florida Supreme Court

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has indicated that the term “legal residence” has two components—both intention and fact. *See Bloomfield v. City of St. Petersburg Beach*, 82 So. 2d 364, 368 (Fla. 1955). In other words, to establish legal residence, a person must have a “good faith intention” to reside in a particular place, coupled with “positive overt acts” that demonstrate that intention. *See id.* Such “overt acts” could include the person buying a home in the county, applying for homestead in the county, registering his or her vehicle in the county, receiving mail at an address in the county, or undertaking any other activity normally associated with home life. *Cf. id.* (indicating that factors to examine when determining where a person has legal residence include where the person’s vehicle is registered, where the person’s family resides, and where the person calls “home,” among other factors); *Div. of Elections Op. 93-05* (June 23, 1993) (listing more factors). Thus, the determination of legal residence is fact-intensive and turns on the particular circumstances of each individual case. *See id.* at 369 (“[E]stablishment of one’s residence will usually depend on a variety of acts or declarations all of which must be weighed in the particular case as evidence would be weighed upon any other subject”). A person can only have *one* “legal residence.” *See Walker v. Harris*, 398 So. 2d 955, 958 (Fla. 4th DCA 1981).

Generally, each voter registration applicant must decide whether he or she is truly a legal resident of the county where voter registration status is sought.¹ *See* § 97.051, Fla. Stat. (requiring the voter applicant to subscribe to an oath upon registering, which, among other things, requires the applicant to swear that he or she is “qualified as an elector under the Constitution and laws of the State of Florida . . .”); *see also* § 97.041(1)(a), Fla. Stat. (providing various requirements for registering to vote, including the requirement that the applicant must be “a legal resident of the county in which that person seeks to be registered” and a “legal resident of the State of Florida”). When the voter registration applicant takes the oath upon registering, that voter is solemnly declaring that he or she is a legal resident of the county.² *See id.*

¹ Though the voter registration applicant bears the responsibility for ensuring that he or she is a legal resident of the county where the applicant seeks to register, the supervisor also bears various legal responsibilities to ensure that voters are registered at the proper locations. *See, e.g.*, § 98.045(1), Fla. Stat. (providing that the supervisor “shall determine whether a voter registration applicant is ineligible” based on the fact that “[t]he applicant has provided an address of legal residence that is not his or her legal residence”); § 98.065(2), Fla. Stat. (requiring the supervisor to conduct a biennial registration list maintenance program); § 98.065(4)(a), Fla. Stat. (in certain circumstances requiring the supervisor, if he or she receives information indicating a voter’s address has changed, to change the registration records and send the voter an address change notice); § 98.075(6), Fla. Stat. (requiring the supervisor, if he or she receives certain information indicating “that a registered voter is ineligible because he or she . . . has listed a residence that is not his or her legal residence,” to begin procedures for removal pursuant to law).

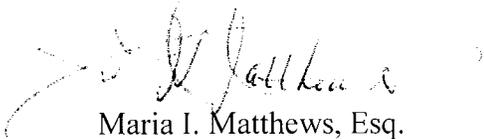
² Any person who willfully and falsely swears in relation to voting or who willfully submits false voter registration information commits a third-degree felony under Florida law. *See* § 104.011, Fla. Stat.

The facts at hand, while not necessarily conclusive, are at least indicative of the applicant's intent to make Putnam County his legal residence. The applicant ultimately must determine for himself whether he can truthfully declare that he is a "legal resident" of Putnam County (in lieu of any other county) at the time he subscribes to the voter registration oath contained in section 97.051. Such declaration must be based upon his good faith *intention* to be a resident of Putnam County, and based upon his *overt actions* that demonstrate that intent (such as being involved in the community, owning a home in Putnam County for 30 years, and taking other actions showing that Putnam County is legitimately his home).³ His claim of homestead exemption in another county, alone, is not dispositive in the other direction. Suffice it to say, a supervisor is not required to resolve factual disputes in the face of evidence supporting possible legal residence in two different counties. Based on the facts you have presented and the evidence available to you, it is the opinion of the Division that if the voter registration applicant swears or affirms on his application that he legally resides in Putnam County, you may legally perform your duty as supervisor to register him to vote in Putnam County.

SUMMARY

A person may only be registered to vote in the county where the person has his or her "legal residence." The term "legal residence" means the place where the person both truly intends to reside and has made overt acts that demonstrate that intention. If the supervisor of elections becomes aware of information that points to a person's legal residence being outside the county of prospective registration, as long as the supervisor is aware of evidence that supports a person's claim of legal residence *within* the county, the supervisor may register the person to vote. A supervisor is not required to resolve factual disputes in the face of evidence supporting legal residence in two different counties.

Respectfully,



Maria I. Matthews, Esq.
Director, Division of Elections

³ Issues involving homestead law fall outside the Florida Election Code. *See, e.g.*, art. X, § 4, Fla. Const. Therefore, the Division has no authority to comment on the legality of the registrant claiming his homestead exemption in St. Johns County. *But see Rosenthal v. Esquinaldo*, 443 So. 2d 281 (Fla. 3d DCA 1983) (even though a person had claimed homestead in Dade County, he was a qualified elector of Monroe County).