

1999 HOUSE POLITICAL SUBDIVISIONS

HB 1181

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1181

House Political Subdivisions Committee

Conference Committee

Hearing Date 01-14-99

Tape Number	Side A	Side B	Meter #
1	x		1.8-44.6
1-dated 1-15-99		x	13-2-15.0
Committee Clerk Signature <i>Pam Dever</i>			

Minutes:

BILL SUMMARY: Relating to officers taking oaths, failing to qualify for office, nominating petitions and procedures to circulate nominating petitions, filling unexpired terms on a city council by election, and appointing election workers in city elections.

Chairman Froseth opened the hearing with members present: Chairman Froseth, Vice Chair Maragos, Rep. Delmore, Rep. Disrud, Rep. Eckre, Rep. Ekstrom, Rep. Glassheim, Rep. Gunter, Rep. Johnson, Rep. Koppelman, Rep. Niemeier, Rep. Rose, Rep. Severson, Rep. Thoreson, and Rep. Wikenheiser.

Cory Fong, Sec. of State Office, : 2.2 Testified in favor of HB 1181. (See attached testimony) It is intended to be a clean up bill.

Rep. Eckre : Cory, on pg. 1, line 13-14, and also pg. 4, line 16,17,18; does this mean there is no other recourse?

Cory : What's happening is write-ins are elected and don't want the office. They don't file the oath of office and there is a waiting period to try to determine if they want the office. By not filing the oath by this change indicates they fail to qualify for the office. The governing body can move on to the vacancy section. We are not trying to deal with the vacancy issue; we are dealing with those people who do not file oath of office.

Rep. Koppelman : Language along the lines of "refusal" to serve would be more friendly.

Cory : 11.5 I think that would be better.

Rep. Glassheim : What is the process for filing the oath?

Cory : City auditor or business manager, upon certifying the election results, will make notice, and get it to the person.

Bev Nielson, N.D. School Board Assoc. : 24.6 Testified in favor of the bill. Their major concern is the vacancy issue. The only real way to create a vacancy was with a resignation. The people who didn't want to serve and did not file an oath, so they couldn't resign because technically they have no office. We need to get "failure" to sign the oath of office to create a vacancy situation., so we need to know where we are.

Rep. Glassheim : 27.5 Can we accomplish the problem by having a "failure to take office" form for those to sign?

Bev. : We need an official document to fit statute then it might be all right. We need a legal vacancy.

Rep. Koppelman : Rather than having a statute, I think we should leave it up to local political subdivisions.

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House Political Subdivisions Committee

Bill/Resolution Number hb1181

Hearing Date 01-14-99

Jerry Hjelmstad, League of Cities, : 31.7 Testified in support of sect. 4 relating to filling unexpired terms; and sect. 5 would be a good change.

Bryan Hoime:35.2 was present to tell the committee he was in support of HB1181.

The committee asked Cory Fong to refine his amendments by Friday.

Chairman Froseth : Hearing no opposing testimony, the hearing was closed.

COMMITTEE ACTION: 01-15-99 (new tape-13.2) Rep. Koppelman made a motion to accept the amendments Cory brought forth from the Sec. of State Office today. Rep. Glassheim seconded the motion. A voice vote was called with all yeas and no nays.

Vice Chair Maragos made a motion to DO PASS as amended, Rep. Ekstrom seconded the motion. ROLL CALL: 15 Yes and 0 No with 0 Absent. Rep. Thoreson will carry the bill.

January 15, 1999

VK
1/15/99

HOUSE AMENDMENTS TO HOUSE BILL NO. 1181

Page 1, line 13, replace "Failure to file" with "Refusal to take"

Page 1, line 14, after "a" insert "refusal to serve and, therefore, a"

HOUSE AMENDMENTS TO HOUSE BILL NO. 1181 1/18/99

Page 2, line 13, after "the" insert "North Dakota" and after "or" insert "its"

Page 2, remove line 14

Page 2, line 16, after the underscored period insert "The use of ditto marks to indicate that the information contained on the previous signature line carries over does not invalidate a signature. Signatures that are not accompanied by a complete date are not invalid if the signatures are preceded and followed by a signature that is accompanied by a complete date."

HOUSE AMENDMENTS TO HOUSE BILL NO. 1181 1/18/99

Page 4, line 16, replace "Failure to file" with "Refusal to take"

Page 4, line 17, after "a" insert "refusal to serve and, therefore, a"

HOUSE AMENDMENTS TO HOUSE BILL NO. 1181 1/18/99

Page 5, line 3, replace "as determined by the city auditor" with "by the governing body"

Re-number accordingly

Please type or use
black pen to complete

Date 1-15-99

Roll call vote # 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1181

House POLITICAL SUBDIVISIONS Committee _____

Subcommittee on _____

Conference Committee

} Identify or
check where
appropriate

Legislative Council Amendment Number _____

Action Taken Do Pass Do Pass

Motion Made By Rep. Koppelman Seconded By Rep. Eckstrom

Representatives	Yes	No	Representatives	Yes	No
Chairman Froseth	/		Rep. Wikenheiser	/	
Vice Chair Maragos	/				
Rep. Delmore	/				
Rep. Disrud	/				
Rep. Eckre	/				
Rep. Ekstrom	/				
Rep. Glassheim	/				
Rep. Gunter	/				
Rep. Johnson, N	/				
Rep. Koppelman	/				
Rep. Niemeier	/				
Rep. Rose	/				
Rep. Severson	/				
Rep. Thoreson, B	/				

Total 15 0
(Yes) (No)

Absent 0

Floor Assignment Rep. Thoreson, B.

If the vote is on an amendment, briefly indicate intent:

DO NOT USE HIGHLIGHTER ON ANY FORMS

REPORT OF STANDING COMMITTEE

HB 1181: Political Subdivisions Committee (Rep. Froseth, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1181 was placed on the Sixth order on the calendar.

Page 1, line 13, replace "Failure to file" with "Refusal to take"

Page 1, line 14, after "a" insert "refusal to serve and, therefore, a"

Page 2, line 13, after "the" insert "North Dakota" and after "or" insert "its"

Page 2, remove line 14

Page 2, line 16, after the underscored period insert "The use of ditto marks to indicate that the information contained on the previous signature line carries over does not invalidate a signature. Signatures that are not accompanied by a complete date are not invalid if the signatures are preceded and followed by a signature that is accompanied by a complete date."

Page 4, line 16, replace "Failure to file" with "Refusal to take"

Page 4, line 17, after "a" insert "refusal to serve and, therefore, a"

Page 5, line 3, replace "as determined by the city auditor" with "by the governing body"

Renumber accordingly

1999 SENATE POLITICAL SUBDIVISIONS

HB 1181

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HOUSE BILL 1181

Senate Political Subdivisions Committee

Conference Committee

Hearing Date February 25, 1999

Tape Number	Side A	Side B	Meter #
1		x	1090 to 2739
Committee Clerk Signature 			

Minutes:

SENATOR LEE: opens the hearing on HOUSE BILL 1181

CORY FONG: introduce HOUSE BILL 1181, see testimony

SENATOR LEE: and questions

JERRY HJELMSTED: support of HOUSE BILL 1181, section 4 would change the process for filling vacancies in council form cities, some people might run for a two year term under these conditions also section 5 relating to the oath of office, this clarifies the refusal to take the oath of office this would clarify when the office becomes vacant and how to fill this office through the courts

SENATOR LEE: example of someone refusing to take the oath of office

JERRY HJELMSTED: comes up when people are written in and there is no response from that person regarding the position. Something in writing from the person

Page 2

Senate Political Subdivisions Committee

Bill/Resolution Number Hb1181

Hearing Date February 25, 1999

SENATOR WATNE: section 9 and the causes for vacancies and forced to be removed from office and what are the reasons for this

JERRY HJELMSTED: recall elections and the governor removing people from office

SENATOR WATNE: being judged mentally ill, that must be done by a court

JERRY HJELMSTED: I assume that this is the case

DISCUSSION

SENATOR LEE: reasons why people can be removed from offices

SENATOR KELSH: section 8 where it includes any other school district, does this mean that all other sections of this law will be handled in the same way for those that aren't mentioned like city vacancies or school board vacancies

JERRY HJELMSTED: those other subdivisions, if they fail to qualify, it would revert back to their provisions for filling those vacancies as required by law

CORY FONG: going back to SENATOR WATNE: question: section 9 of the bill, section 44-02.1 of the century code, provides for in section 8 page 7 says that if the incumbent is convicted with a felony, they can be removed. line 10 page 7, section 8b convicted of a felony or a crime involving moral turpitude an incumbent can be removed

SENATOR WATNE: know it if you say it, SENATOR KELSH: the purpose is other subdivisions because we want to include school boards. School boards testified in favor of this bill

SENATOR KELSH: all other sections of this bill apply to school boards

CORY FONG: yes

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Senate Political Subdivisions Committee
Bill/Resolution Number Hb1181
Hearing Date February 25, 1999

KEN YANTES: support this bill as it's written and SENATOR KELSH: question about other townships. Removal from office as it pertains to ND Century Code section 44-11.01 refers to removal from office by the governor and what offices are removable

SENATOR LEE: custodian??

KEN YANTES: review of ND century code

SENATOR LEE: questions

MOTION: close hearing on HOUSE BILL 1181

MOTION: "do pass" by SENATOR WATNE:

SECONDED BY SENATOR LYSON:

SENATOR KELSH: TO CARRY BILL ON THE FLOOR

REPORT OF STANDING COMMITTEE (410)
February 25, 1999 2:41 p.m.

Module No: SR-34-3610
Carrier: Kelsh
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1181, as engrossed: Political Subdivisions Committee (Sen. Lee, Chairman)
recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
Engrossed HB 1181 was placed on the Fourteenth order on the calendar.

1999 TESTIMONY

HB 1181



SECRETARY OF STATE

STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

January 14, 1999

TO: Representative Froseth and Members of the House Political Subdivisions Committee

FR: Al Jaeger, Secretary of State

RE: **HB 1181 – Local Election Clean Up**

House Bill 1181 is intended to clean up a variety of local election-related statutes that have raised questions during the past two years.

Sections 1, 5, 8 and 9

3.4 Current North Dakota law pertaining to cities and school districts provides little guidance for officers who are required to file oaths of office. As a result, it is also very difficult to determine if and when vacancies exist in city or school district offices for reasons of failing to qualify or taking the prescribed oaths of office.

As an example, current school district law provides no specific time frame for when members elected to the school board are required to file their oaths of office with the school business manager. According to section 15-47-08, the law simply provides that before entering into the duties of their office, persons elected to the school board shall take and file the prescribed oath of office with the school business manager. However, the law does not specify when those oaths of office must be filed with the school business manager.

2.1 Section 1 clarifies the law by requiring the oath of office to be filed within ten days of the person's election or appointment to a school district office. This is the same time frame provided to persons elected to city office in North Dakota.

Sections 1 and 5 further add that failure to file the oath of office, in cases of persons elected or appointed to any city or school district offices, must also be deemed a failure to qualify for the office according to section 44-02-01.

Sections 8 and 9 strengthen this by providing that failing to qualify for an office includes failing to take the designated oath of office prescribed by law. More importantly, these sections clarify that a vacancy may be declared when any person elected to any state, district, county, or other political subdivision office, fails to qualify for the office.

All of these changes made in sections 1, 5, 8, and 9 of House Bill 1181 provide much clearer guidance to city and school officials for determining whether a person has failed to qualify for an office and when a vacancy exists in an office.

Sections 2, 3 and 7

Currently, there is a great deal of inconsistency in the content of candidate nominating petitions at all levels across the state. While current law provides some guidance for what is required for statewide, legislative, district, and county nominating petitions, there is virtually no guidance for nominating petitions required of city and other political subdivision candidates. For this reason, nominating petitions are also reviewed and scrutinized in many different ways at all levels across the state.

Sections 2, 3, and 7 of House Bill 1181 are intended to bring consistency to the content of candidate nominating petitions and the manner in which nominating petitions are to be circulated. Section 2 outlines the specific required components of candidate nominating petitions for state, district, county, or other political subdivision level candidates. In sections 3 and 7, which also provide for candidate nominating petitions, a reference is made back to the required components already specified in section 2 of the bill. *to promote consistency*

Presently, North Dakota law does not provide a specific date for when candidates for city office may begin circulating nominating petitions. According to section 16.1-11-15, statewide, legislative, district, and county candidates may begin circulating nominating petitions not earlier than 90 days before the nominating petitions are required to be filed. Therefore, section 7 simply provides a specific date for candidates for city office to begin circulating nominating petitions. That beginning date would also coincide with the 90 days before the filing deadline.

Section 4

Present law governing the method cities use to fill unexpired terms of office is very confusing and convoluted. According to section 40-08-06, whenever more than one half of the total number of council members are to be elected in any one election, the length of the terms of the council members elected must be determined by the number of votes cast for each candidate. Those candidates receiving the greatest number of votes are to be elected to the full terms and those receiving the next greatest number of voters are to be elected to the unexpired, shorter terms.

7.0 Under this provision, candidates are not required to designate the specific terms they are seeking or hoping to be elected to since it ultimately depends on the number of votes all candidates receive. As a result, long time incumbents may be elected to fill unexpired terms or first-time candidates hoping to get their feet wet by serving a shorter, unexpired term, may end up being elected to a full, four-year term.

Section 4 of House Bill 1181 makes the process of filling unexpired terms much more specific. It requires unexpired terms to be designated on ballots separately from any regular

terms also appearing on ballots. Section 4 also requires candidates to specify whether they are seeking a full term or unexpired term on their nominating petitions.

Section 6

7,6 In most cases, cities holding special elections not combined with the county don't need a five member election board consisting of an inspector, 2 judges, and 2 clerks to oversee each polling location on election day. In most cases it is simply over-kill and wasteful. *to involve that many people*

Section 6 of House Bill 1181 provides that for city elections not combined with the county, a city is only required to have an inspector and 2 judges to oversee each polling location. The need for 2 additional clerks is eliminated. Section 6 however, does authorize the city auditor to appoint two additional clerks for precincts in which over 300 votes are cast in any previous election, if deemed necessary.

For these reasons, I encourage your support for House bill 1181.



SECRETARY OF STATE

STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

January 15, 1999

TO: Representative Froseth and Members of the House Political Subdivisions Committee

FR: Cory G. Fong, Elections Director

RE: HB 1181 – Local Election Clean Up – Proposed Amendments

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Page 2, line 14, remove "d. The state."

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As an example, current school district law provides no specific time frame for when members elected to the school board are required to file their oaths of office with the school business manager. According to section 15-47-08, the law simply provides that before entering into the duties of their office, persons elected to the school board shall take and file the prescribed oath of office with the school business manager. However, the law does not specify when those oaths of office must be filed with the school business manager.

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For these reasons, I encourage your support for House bill 1181.

16.1-01-05. Voting by qualified elector moving from one precinct to another. Where a qualified elector moves from one precinct to another precinct within this state, the person is entitled to vote in the precinct from which the person moved until the person has established a new voting residence.

Source: S.L. 1981, ch. 241, § 1.

Cross-References.

Removal of voter from one precinct to another, see N.D. Const., Art. II, § 1.

16.1-01-04. Qualifications of electors.

1. Every citizen of the United States who is: eighteen years or older; a resident of this state; and has resided in the precinct at least thirty days next preceding any election, except as otherwise provided in regard to residency in chapter 16.1-14 is a qualified elector.
2. Every qualified elector of the state may have only one voting residence.
3. A person's voting residence must be determined in accordance with the rules for determining residency as provided in section 54-01-26.
4. Pursuant to section 2 of article II of the Constitution of North Dakota, voting by persons convicted and sentenced for treason or felony must be limited according to chapter 12.1-33.

*per laws
to
Presidential
Electors*

*See
appendix
D*

Source: S.L. 1981, ch. 241, § 1; 1993, ch. 207, § 1.

Cross-References.

Qualification of electors, see N.D. Const., Art. II, §§ 1, 2.

Qualification of electors in municipal election, see § 40-21-01.

Township election, qualified voters, see § 58-04-08.

Unqualified voting, penalty, see § 16.1-01-12.

Congress is empowered, as it did in the Voting Rights Act Amendments of 1970, 42 U.S.C., § 1973aa, to prohibit use of literacy tests or other devices used to discriminate against voters on account of their race in all state and national elections. *United States v. Arizona*, 400 U.S. 112, 91 S. Ct. 260, 27 L. Ed. 2d 272 (1970).

Place of Residency.

The place of one's residence for the purpose of voting is where he has his established home, the place where he is habitually present, and to which, when he departs, he intends to return, must be determined from all the facts and circumstances, and the intention must be accompanied by acts in harmony therewith. *Nelson v. Gass*, 27 N.D. 357, 146 N.W. 537, 1915C Ann. Cas. 796 (1914).

Presumption of Naturalization.

A presumption that a voter is naturalized arises from the fact that he has voted. *Kadlec v. Pavik*, 9 N.D. 278, 83 N.W. 5 (1900).

DECISIONS UNDER PRIOR LAW

Congressional Power.

As it did in Voting Rights Act Amendments of 1970, 42 U.S.C., § 1973aa-1, Congress can prohibit states from disqualifying voters in elections for presidential and vice-presidential electors because they have not met state residency requirements, and can set residency requirements and provide for absentee balloting in presidential and vice-presidential elections. *United States v. Arizona*, 400 U.S. 112, 91 S. Ct. 260, 27 L. Ed. 2d 272 (1970).

Collateral References.

Elections \approx 59-94.

25 Am. Jur. 2d, Elections, § 103 et seq.

29 C.J.S. Elections, §§ 14-35.

State voting rights of residents of federal military establishments, 34 A.L.R.2d 1193.

What constitutes "conviction" within constitutional or statutory provision disenfranchising one convicted of crime, 36 A.L.R.2d 1238.

Residence of student or teacher for voting purposes, 98 A.L.R.2d 488.

Conviction under federal law, or law of another state or county, as affecting right to vote or hold public office, 39 A.L.R.3d 303.

Residence of students for voting purposes, 44 A.L.R.3d 797.

Mentally incapacitated persons' voting rights, 80 A.L.R.3d 1116.

Law Reviews.

A Study of Guardianship in North Dakota, 60 N.D. L. Rev. 45, 77 (1984).

54-01-26. Residence — Rules for determining. Every person has in law a residence. In determining the place of residence, the following rules must be observed:

1. It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he returns in seasons of repose.
2. There can be only one residence.
3. A residence cannot be lost until another is gained.
4. The residence of the supporting parent during his or her life, and after the supporting parent's death, the residence of the other parent is the residence of the unmarried minor children.
5. An individual's residence does not automatically change upon marriage, but changes in accordance with subsection 7. The residence of either party to a marriage is not presumptive evidence of the other party's residence.
6. The residence of an unmarried minor who has a parent living cannot be changed by either his own act or that of his guardian.
7. The residence can be changed only by the union of act and intent.

Source: R.C. 1895, § 12; R.C. 1899, § 12; R.C. 1905, § 12; C.L. 1913, § 14; R.C. 1943, § 54-0126; S.L. 1967, ch. 158, § 103; 1983, ch. 172, § 52.

Cross-References.

Divorce actions, presumption of domicile inapplicable, see § 14-05-18.

Residence for poor relief purposes, see chapter 50-02.

In General.

Plaintiff must prove three elements to establish defendant's change of residence: (1) abandonment of the old domicile, (2) actual removal to a new domicile, and (3) intent to change from the old to the new and to remain at the new domicile. *Keating v. Keating* (1987) 399 NW 2d 872.

Burden of Proving Change of Residence.

There is a presumption against a change of legal residence, and the burden of proving a change of legal residence is on the person alleging the change. *B.R.T. v. Executive Dir. of Social Serv. Bd.* (1986) 391 NW 2d 594.

The burden of proving a change of legal residence is on the person alleging the change. *Keating v. Keating* (1987) 399 NW 2d 872.

Inmates.

The rules for determining residence set forth in this section do not support any argument that an inmate in a penitentiary is a resident of the county where he is incarcerated. *Shulze v. Shulze* (1982) 322 NW 2d 250.

Intention of Party.

Residence is a question of fact in which the intention of the party enters as an important element. *Wehrung v. Ideal School Dist. No. 10* (1956) 78 NW 2d 68.

Intent to move in the near future without any act of movement does not bring about a change in residence. *Bernhardt v. Dittus* (1978) 265 NW 2d 684.

Length of Residence Irrelevant.

A person is not required to reside for any specified length of time in order to acquire residence in the state within purview of general laws. *Burke County v. Brusven* (1932) 62 ND 1, 241 NW 82.

One Legal Residence.

Every person has only one legal residence or domicile, as distinguished from the possibility of several actual physical residences. *B.R.T. v. Executive Dir. of Social Serv. Bd.* (1986) 391 NW 2d 594.

Question of Fact.

Legal residence, determined according to the rules in this section, is a question of fact, which will not be disturbed on appeal unless it is clearly erroneous. *B.R.T. v. Executive Dir. of Social Serv. Bd.* (1986) 391 NW 2d 594.

Subsection 3 — Abandonment.

A person who qualifies as an elector does not lose his status as a resident by voluntary absence from the county unless he actually abandons his residence therein and gains a residence elsewhere. *City of Enderlin v. Pontiac Township, Cass County* (1932) 62 ND 105, 242 NW 117, explained in 62 ND 709, 714, 245 NW 483.

Leaving a place of residence does not constitute an abandonment thereof unless the resident establishes another, and a new residence can be established only by the union of act and intent. *State ex rel. Sathre v. Moodie* (1935) 65 ND 340, 258 NW 558.

A domicile once existing cannot be lost by mere abandonment, even when coupled with the intent to acquire a new one, but continues until a new one is in fact gained. *Northwestern Mtg. & Security Co. v. Noel Constr. Co.* (1941) 71 ND 256, 300 NW 28.

A person having his legal residence in the state, who removes from the place of his domicile with the intention not to reside there any longer and to remove to another state, is

still a resident of this state as long as he remains herein. *Northwestern Mtg. & Security Co. v. Noel Constr. Co.* (1941) 71 ND 256, 300 NW 28.

Subsection 4 — Domicile of Origin.

The domicile of origin is determined by the domicile, at time of child's birth, of that person upon whom he is legally dependent. *Schillerstrom v. Schillerstrom* (1948) 75 ND 667, 32 NW 2d 106, 2 ALR 2d 271.

Subsection 5 — Rebuttable Presumption.

The presumption of continuance of the marriage relation and identity of domicile of husband and wife cannot prevail when the facts are shown to be to the contrary. *Krumenacker v. Andis* (1917) 38 ND 500, 165 NW 524; *Fisher v. Fisher* (1926) 53 ND 631, 207 NW 434.

Subsection 5 — Separation and Divorce.

In actions for divorce the presumption of law that the domicile of the husband is the domicile of the wife does not apply; after separation, each party may have a separate domicile, depending upon proof of actual residence. *Schillerstrom v. Schillerstrom* (1948) 75 ND 667, 32 NW 2d 106, 2 ALR 2d 271.

Subsection 7 — Act and Intent.

Moving from one place of residence to another with the intent to abandon the old residence and establish a new residence is in law a change of residence which may be accomplished in one day between townships. *Burke County v. Oakland* (1927) 56 ND 343, 217 NW 643.

A nonresident may become a resident of the state upon the performance of some act indicative of an intention to establish a residence within the state, coupled with an actual present intention to establish such a residence. *City of Enderlin v. Pontiac Township, Cass County* (1932) 62 ND 105, 242 NW 117, explained in 62 ND 709, 714, 245 NW 483.

A resident of a certain county or political subdivision of the state may become a nonresident by performance of an act indicative of an intention to abandon his then residence and to establish a residence elsewhere, accompanied by a then present intention to accomplish such purpose. *City of Enderlin v. Pontiac Township, Cass County* (1932) 62 ND 105, 242 NW 117.

To effect a change of domicile the fact of physical presence at a dwelling place and the intention to make it a home must concur; if they do, even for a moment, the change of domicile takes place. *Schillerstrom v. Schillerstrom* (1948) 75 ND 667, 32 NW 2d 106, 2 ALR 2d 271.

A schoolteacher and his wife did not lose their residency by moving from Killdeer to Grand Forks for one year so that the husband could secure a graduate degree at the university; there was no showing of intent permanently to change residence and the husband and wife were entitled to absent voters' ballots for voting at a bond election in the Killdeer Public School District. *Mittelstadt v. Bender* (1973) 210 NW 2d 89.

Synonymous with Domicile.

The term residence within the purview of this statute is synonymous with domicile. *City of Enderlin v. Pontiac Township, Cass County* (1932) 62 ND 105, 242 NW 117; *Anderson v. Breithbarth* (1932) 62 ND 709, 245 NW 483; *B.R.T. v. Executive Dir. of Social Serv. Bd.* (1986) 391 NW 2d 594.

DECISIONS UNDER PRIOR LAW

Inapplicable Statute.

Section 14-10-01, which, prior to July 1, 1971, provided that minors were males under twenty-one and females under eighteen, did not apply to former section 39-17-03 of the unsatisfied judgment fund law as an aid in determining residency; males and females eighteen and older were to be treated uniformly in determining their residency for recovery from the unsatisfied judgment fund. *Tang v. Ping* (1973) 209 NW 2d 624.

Collateral References.

Domicile ⇌ 1-11.

25 Am. Jur. 2d, Domicil, §§ 1-102.

28 C.J.S. Domicile, §§ 1-19; 77 C. J. S. Residence.

Domicile while in itinere from old to new home, 5 ALR 296; 16 ALR 1298.

Separate domicile of married women or divorced women as affecting citizenship, domicile, residence, or inhabitancy of children, 53 ALR 1160.

Separate domicile of wife for purposes other than suit for divorce, separation or maintenance, 75 ALR 1254; 90 ALR 358; 128 ALR 1422.

Voting or registering to vote in certain place as affecting question of domicile or residence for other purposes, 107 ALR 448.

Diverse adjudication by courts of different states, as to domicile of decedent, as regards taxation, probate of will, administration, or distribution of estates, 121 ALR 1200.

Public officer or employee, change of domicile by, 129 ALR 1382.

Venue statute, residence or domicile of student, teacher or inmate of institution for purpose of, 132 ALR 509.

Death of parent to whom custody has been

awarded by decree of divorce as making child's domicile that of surviving parent, 136 ALR 914.

Armed forces, domicile or residence of persons in, 148 ALR 1413; 149 ALR 1471; 150 ALR 1468; 151 ALR 1468; 152 ALR 1471; 153 ALR 1442; 155 ALR 1466; 156 ALR 1465; 157 ALR 1462; 158 ALR 1474.

Separate domicile of mother as affecting domicile or residence of infant, 13 ALR 2d 306.

Acquisition of domicile by sending wife or family to new home, 31 ALR 2d 775.

Domicile of infant on death of both parents; doctrine of natural guardianship, 32 ALR 2d 863.

Mental incompetent, change of state or national domicile of, 96 ALR 2d 1236.

What absence from United States constitutes interruption of permanent residence so as to subject alien to exclusion or deportation on re-entry, 22 ALR 3d 749.

Construction of phrase "usual place of abode," or similar terms referring to abode, residence, or domicil, as used in statutes relating to service of process, 32 ALR 3d 112.

Requirements as to residence or domicil of adoptee or adoptive parent for purposes of adoption, 33 ALR 3d 176.

Students: residence of students for voting purposes, 44 ALR 3d 797.

What constitutes residence or domicil within state by citizen of another country for purpose of jurisdiction in divorce, 51 ALR 3d 223.

Validity and application of provisions governing determination of residency for purpose of fixing fee differential for out-of-state students in public college, 56 ALR 3d 641.

Domicile for state tax purposes of wife living apart from husband, 82 ALR 3d 1274.

Who is resident within meaning of statute prohibiting appointment of nonresident executor or administrator, 9 ALR 4th 1223.

54-01-26. Residence — Rules for determining.

Distinction Between Legal Residence and Physical Residence.

A person may have two or more physical residences, as distinguished, from that person's legal residence that is the person's domicile. Domicile is synonymous with residence "in law." *Burshiem v. Burshiem*, 483 N.W.2d 175 (N.D. 1992).

Domicile.

Since domicile and legal residence are synonymous, the statutory rules for determining the place of residence are the rules for determining domicile. *Burshiem v. Burshiem*, 483 N.W.2d 175 (N.D. 1992).

Domicile is a question of fact. *Burshiem v. Burshiem*, 483 N.W.2d 175 (N.D. 1992).

To find a change of domicile, the fact of a physical presence at a residence must concur with the intent to make that place the legal residence, "the union of act and intent." The person's intent must be determined from the person's conduct and declarations. *Burshiem v. Burshiem*, 483 N.W.2d 175 (N.D. 1992).

Intent of Party.

Wife's intent as to residency in this state was not negated by her employment in Nebraska, her Nebraska driver's license and her Nebraska vehicle registration. *Habberstad v. Habberstad*, 444 N.W.2d 703 (N.D. 1989).

Occupancy.

The concept of residency relative either to the notion of homestead or legal residency does not contemplate actual and continuous occupancy of the property. Indeed, it is recognized that neither the fact of removal from the property or the length of time away will defeat an established homestead or place of legal residency unless such removal is coupled with the requisite intent. In *re Lippert*, 113 Bankr. 576 (Bankr. D.N.D. 1990).

Question of Fact.

Legal residence is a question of fact to be determined by the fact finder and to be reviewed according to the clearly erroneous standard of Rule 52(a), N.D.R.Civ.P. *Habberstad v. Habberstad*, 444 N.W.2d 703 (N.D. 1989).

Subsection 3.

—Abandonment.

Closely akin to the issue of homestead abandonment is the issue of abandonment of a legal residency. Here too the law looks to action coupled with intent, with intent being the principal focus. As codified by this section, a residence cannot be changed until another is gained and can be changed only by the union of act and intent. In *re Lippert*, 113 Bankr. 576 (Bankr. D.N.D. 1990).