



VILLAGE OF JOHNSON CREEK MEETING NOTICE

125 Depot Street, Johnson Creek, WI

Agenda

SPECIAL VILLAGE BOARD

June 13, 2016

125 Depot St.

6:00 p.m. or immediately following Committee of the Whole

1. Call to order - roll call
2. Pledge of Allegiance
3. Statement of Public Notice
4. Discussion/Action Bell Park – Shelter/Basketball Court/Location – *see Village Board packet pgs- 20-23, Pkt 4*
5. Discussion/Action Development Agreement Jon Green, Steve Kearns & Keajen Properties, LLC - *see Village Board packet pgs – 64-75*
6. Discussion/Action Development Agreement Option to Purchase and Fourth Amendment BBC Land Ventures, LLC/North Resort Drive LLC – *see Village Board packet pgs 76-85*
7. Discussion/Action Determining Residency of Trustee Steve Wollin - *pgs 1-5*
8. Convene in Closed Session
(Pursuant to Wisconsin Statutes §§ 19.85(1)(g) conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved. - Bases Loaded Corner Bar and Pursuant to Wisconsin Statutes §§19.85(1)(c) considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercise responsibility. (Review of Administrator Applicants).
9. Reconvene in Open Session
10. Action from Closed Session
11. Adjourn

<i>Agenda Posting Information</i>	
Date	
Time	a.m. / p.m.
Initials	

N.B. Page Numbers Denote Packet Location

NOTICE: It is possible that members of, and possibly a quorum of, other governmental bodies of the Village may be in attendance at the meetings above to gather information. No action will be taken by any governmental body at the meetings above other than by the government body specifically referred to in the above notice. Request from persons with hearing or sight disabilities who need assistance to participate in this meeting should be made to the Village Clerk's Office at (920) 699-2296 with as much advance notice as possible.

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DETERMINING THE RESIDENCY of Municipal Officers

By Claire Silverman, Legal Counsel

At the time they are elected, members of municipal governing bodies and other local elected officers must be resident electors of the municipality.¹

Common council members representing aldermanic districts must not only reside within the city, but must also be residents of the district from which they are elected.² While virtually all elected offices have a residency requirement, the same is not true for appointive offices.

Some appointive offices are subject to a residency requirement.³ Others are not.⁴ Some municipalities have enacted local laws that require residency in order to be eligible for appointment to certain appointive offices even though state law does not impose such a requirement. Some municipalities have residency requirements for employees as well.

Where residency is an eligibility requirement for holding office, it is not enough for the office holder to be a resident at the time of election or appointment. Residency must be maintained throughout the term. A local elective office is vacated when the incumbent ceases to be a resident of the municipality or district from which he or she was elected.⁵ In addition, if residency is a local requirement for appointive offices, a local appointive office is vacated when the incumbent ceases to be a resident of the municipality.⁶

Sometimes questions arise concerning the residency of municipal officers. For example, where does an elected municipal officer reside when he or she

maintains two dwelling places, one inside and one outside the municipality? Does an elected officer who is forced by circumstances to temporarily move outside of the municipality or district from which elected cease to be a resident? Because Wis. Stat. sec. 17.03(4) provides that failure to maintain residency results in the office being vacant, determinations regarding residency are important and must be made carefully. This comment discusses what factors are pertinent in determining a municipal officer's residency.

*see Residency
continued on page 442*

This legal comment is a revised and updated version of a comment originally authored by Curt Witynski and published in the April 1993 issue of the *Municipality*.

1. Wis. Stat. secs. 61.19 and 62.09(2)(a). Candidates for elective municipal offices must become resident electors of the municipality and district they seek to represent at least ten days before the election to be eligible for office. Sec. 6.02(1). See Officers 746 and 747.
2. Wis. Stat. sec. 62.09(2)(a).
3. Examples of appointed offices subject to a residency requirement include library board members under Wis. Stat. sec. 43.58 and commissioners for a redevelopment authority under Wis. Stat. secs. 66.1333 and 66.1339.
4. For example, state statutes do not require that plan commission, zoning board of appeals or police and fire commission members be municipal residents.
5. Wis. Stat. sec. 17.03(4)(c).
6. Wis. Stat. sec. 17.03(4)(d).

“IN ANALYZING
 THE RESIDENCY
 ISSUE, THE
 COURT DECLARED
 THAT
 “[C]ONTINUOUS
 PERSONAL
 PRESENCE AND
 INTENTION
 ESTABLISH
 RESIDENCY.””

see *Residency*
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STANDARDS FOR DETERMINING
 RESIDENCY

The state statutes governing city and village officers do not define “resident.” Although case law provides some guidance, cases often involve municipal employees rather than municipal officers. However, the cases are useful because the courts are examining what residency means.

In *Kempster v. City of Milwaukee*,⁷ the Wisconsin Supreme Court analyzed a provision of Milwaukee’s charter requiring that the health commissioner reside in the city continuously for one year prior to appointment. The court stated:

The word “residence” as used in the charter does not mean physical location continuously. It is used in the broad sense of domicile requisite to citizenship. For the purposes of such residence there must be an actual location in the place in question, with the intention of making it a permanent home. That is sufficient to meet all the requisites of legal residence at the outset. In one sense a person may have more than one place of residence, but he can have only one which has the element of permanency essential in a legal sense to his domicile. He can have only one domicile at one time. To constitute that there must be an actual location, with the intent to make such place his home indefinitely.... To establish the domicile does not require any considerable length of time. Residence at a place for any length of time,

however short, with the concurring intention of permanently residing at such place, renders such place, in a legal sense, the person’s domicile, and, being once fixed, it will continue till abandoned, without reference to any mere absence for a temporary purpose, with the fixed intention of returning when such purpose shall be accomplished. [Citations omitted.]

Kempster, 97 Wis. at 347-348, 72 N.W. at 744 -745 (1897).

In *Eastman v. City of Madison*,⁸ a Madison police officer and firefighter sought reinstatement as Madison employees after their positions of employment were vacated for failure to comply with the city’s residency ordinance. The employees kept apartments in Madison and Madison mailing addresses, telephone numbers, automobile and voter registrations. However, the employees’ spouses and families lived exclusively outside Madison and the children attended school outside of Madison. Moreover, the employees spent most of their off-duty time in their homes outside of Madison.

The employees claimed that they complied with the residency ordinance even though they had homes outside the city. However, the court disagreed. The court of appeals referred to the definition of “residence” in BLACK’S LAW DICTIONARY in determining that the ordinance requiring city employees to “reside” in the city was not unconstitutionally vague. The court noted, “BLACK’S LAW DICTIONARY defines “residence” as “[p]ersonal presence at some place of abode with no present intention of definite and early removal.... Residence implies something more than mere physical presence....”⁹

7. 97 Wis. 343, 72 N.W. 743 (1897).

8. 117 Wis.2d 106, 342 N.W.2d 764 (Ct. App. 1983).

In analyzing the residency issue, the court declared that “[c]ontinuous personal presence and intention establish residency.”¹⁰ The court noted, however, that the employees’ declarations of intent are not conclusive because “[s]uch declarations are only evidence of state of mind and ‘may be suspect because of their self-serving nature.’”¹¹ The court stated, “The self-serving declaration cannot be conclusive but must yield to the intent which the acts and conduct of the person clearly indicate.”¹² In addition, the court of appeals indicated that “the location of immediate family, and the site of children’s schooling is significant in determining residency.”¹³ Thus, the *Eastman* court concluded that the fact that the employees maintained apartments and voter registrations in Madison, “in light of the totality of the circumstances, establishes neither the intent nor the presence necessary for residency” under the Madison ordinance.¹⁴

In an Illinois case more recently decided, the Seventh Circuit court of appeals found that a city employee who resided within city limits only two days per week and lived with his wife outside the city limits the remainder of the time period for twenty years, violated a city residency ordinance even though the employee paid taxes, registered his car, voted and obtained his driver’s license using his city address, where his wife continuously resided in the marital home.¹⁵

In addition to case law, the statutory standards governing residency for voting

purposes are an additional source of information and guidance that should be considered when making residency determinations. Section 6.10 provides, among others not included here, the following standards:

- ✓ The residence of a person is the place where the person’s habitation is fixed, without any present intent to move, and to which, when absent, the person intends to return.¹⁶
- ✓ When a married person’s family resides at one place and that person’s business is conducted at another place, the former place establishes the residence. If the family place is temporary or for transient purposes, it is not the residence.¹⁷
- ✓ The residence of an unmarried person sleeping in one ward and boarding in another is the place where the person sleeps.¹⁸
- ✓ A person shall not lose residence when the person leaves home and goes into another state or county, town, village or ward of this state for temporary purposes with an intent to return.¹⁹
- ✓ As prescribed by article III of the constitution, no person loses Wisconsin residence while absent from Wisconsin on state or federal business, and no member of the U.S. armed forces gains Wisconsin residence be-

cause of being stationed in Wisconsin.²⁰

- ✓ No person gains a residence in any ward or election district of this state while there for temporary purposes only.²¹
- ✓ A person loses Wisconsin residence if he or she moves to another state with an intent to make a permanent residence there or, if while there, exercises the right to vote as a citizen of that state.²²
- ✓ Neither an intent to acquire a new residence without removal, nor a removal without intent, shall affect residence.²³

It is evident from case law and the standards listed above that residency determinations must be made on a case-by-case basis. In general, temporary absences from one’s residence do not result in the loss of residency. In addition, a person’s intention is important, but it must be supported by and not contradicted by the facts.

One important factor in determining residency is continuous personal presence at a particular location. This inquiry focuses on where the person spends most of his or her non-working time. For example, when a person maintains two dwellings, one outside and one inside the

*see Residency
continued on page 446*

9. 342 N.W.2d at 769, quoting BLACK’S LAW DICTIONARY 1176 (rev. 5th ed. 1979).
 10. *Id.* at 770.
 11. *Id.*, quoting Restatement (Second) of Conflict of Laws.
 12. *Id.*, quoting *McCarthy v. Phila. Civ. Svc. Comm.*, 339 A.2d 634, 637 (Pa. 1975), *aff’d*, 424 U.S. 645 (1976) (*per curiam*).
 13. *Id.*
 14. *Id.*
 15. *Gusewelle v. City of Wood River*, 374 F.3d 569 (7th Cir. 2004).
 16. Wis. Stat. sec. 6.10(1).
 17. Wis. Stat. sec. 6.10(2).
 18. Wis. Stat. sec. 6.10(4).
 19. Wis. Stat. sec. 6.10(5).
 20. Wis. Stat. sec. 6.10(6).
 21. Wis. Stat. sec. 6.10(8).
 22. Wis. Stat. sec. 6.10(10).
 23. Wis. Stat. sec. 6.10(11).

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municipality, the question to ask is which dwelling does the person spend the most time at. If the person spends most of his or her non-working time at the family dwelling outside the municipality, as was the case in *Eastman*, then a court would likely conclude that the person is not a resident of the municipality.

Other relevant considerations in determining the residency of a person dividing time between two dwellings are the location of the person's immediate family, and the site of the children's schooling, if any. In addition, other facts should be taken into account when deter-

mining the residency of a person, such as: where the person is registered to vote, the person's mailing address, and what address appears on the person's driver's license, car registration, bank accounts and tax returns.²⁴

WHO DETERMINES THE RESIDENCY OF A MUNICIPAL OFFICER?

When questions are raised concerning the residential status of a municipal officer, who or what body is authorized to make a determination concerning the officer's residency? With regard to municipal governing body members, each city and village governing body may deter-

mine the residency of its members. This is because village boards and common councils have the power to judge the qualifications of their members.²⁵ Municipal governing bodies should not, however, make a determination regarding a member's residency without holding a due process hearing. Also, such a determination is subject to judicial review.

In addition to the ability of municipal governing bodies to determine the residency of their members, any individual who believes that a person holding a local elective office is not a resident of the municipality or district in which he or she serves may file a complaint with the attorney general alleging that the in-

24. See Officers 743.

25. Wis. Stat. secs. 61.32 and 62.11(3)(a).

dividual is not qualified to hold office because of a failure to meet a residency requirement.²⁶ The attorney general may, when such a complaint is filed, investigate whether the allegations are true. If the attorney general finds that the allegations in the complaint are true, the attorney general may commence an action under ch. 784, Stats., for a writ of *quo warranto* to have the person's office declared vacant because of failure to meet a residency requirement.²⁷

If the attorney general refuses to act on a complaint alleging that a particular officer is not a resident of the municipality or district in which the officer serves, the complainant may, on his own, commence a *quo warranto* action under ch. 784.²⁸ However, only a person who has an interest which is distinct from that of the general public would have standing to commence a *quo warranto* action. *City of Waukesha v. Salbashian*.²⁹ But, as the *Salbashian* court explained, "only a slight interest" is necessary to qualify a person to apply for leave to prosecute a *quo warranto* action.³⁰

DE FACTO OFFICERS

When an elective municipal officer, such as a common council member, moves out of the municipality or district from which elected but continues to exercise the powers and duties of the office for the remainder of his or her term, the officer's votes and any actions taken by the governing body are valid. While an elective municipal officer who ceases to be a

resident of the municipality may not be considered a *de jure* officer, he or she is a *de facto* officer if "in possession of [the office], performing its duties, and claiming to be such officer under color of an election or appointment."³¹ The acts of a *de facto* officer are valid as to the public and third parties, and cannot be attacked collaterally.³²

CONCLUSION

Occasionally, questions arise concerning the residency of a particular municipal officer. This Comment has reviewed various factors to consider when attempting to determine the residency of a municipal officer. The residential status of a municipal officer is important because a local elective office is vacated when an incumbent ceases to be a resident of the municipality or district from which he or she was elected. Also, a local appointive office is vacated when the incumbent ceases to be a resident of the municipality if residency is a local requirement. Thus, it is important to make sure that any determination as to residency is made by considering the relevant factors.

Governing Bodies 335 R1
 Officers 751 R1
 Officers 752 R1
 Officers 753 R1

26. Wis. Stat. sec. 8.28(1).
 27. Wis. Stat. sec. 8.28(2).
 28. Wis. Stat. sec. 784.04(2).
 29. 128 Wis.2d 334, 349, 382 N.W.2d 52, 57 (1986).
 30. *Id.*
 31. *State ex rel. Reynolds v. Smith*, 22 Wis.2d 516, 522, 126 N.W.2d 215 (1964).
 32. *Burton v. State Appeal Board*, 38 Wis.2d 294, 304-05, 156 N.W.2d 386 (1968); 77 Op. Att'y Gen. 228, 229 (1988).

“THE RESIDENTIAL STATUS OF A MUNICIPAL OFFICER IS IMPORTANT BECAUSE A LOCAL ELECTIVE OFFICE IS VACATED WHEN AN INCUMBENT CEASES TO BE A RESIDENT OF THE MUNICIPALITY OR DISTRICT FROM WHICH HE OR SHE WAS ELECTED.”

