



FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

June 19, 2018

The Honorable Chris H. Chambless
Supervisor of Elections, Clay County
PO Box 337
500 N. Orange Avenue
Green Cove Springs, Florida 32043

FYI

Re: DE 18-09 Voter Registration –
Registration based on mail forwarding
service address and declaration of domicile –
§§ 97.041(1), 98.045(1), 98.075(7), and
101.045(1), Florida Statutes

Dear Supervisor Chambless:

This letter responds to your request for an advisory opinion on a number of residency issues related to voter registration. Because you are a supervisor of elections proposing to take action relating to Florida's election laws, the Division of Elections is authorized to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2018).

FACTS

You state in your request that Clay County is home to a private mail forwarding service ("the Mail Forwarding Service") that caters to "[c]ruisers, RV'ers, expatriates, and other mobile citizens" who constantly travel, both around the country and abroad. These persons subscribe primarily to the Mail Forwarding Service to receive, sort, and make their mail available online or to forward the incoming mail or packages to their customers wherever they may be in the world. The Mail Forwarding Service advertises additional services such as how their customers can register their vehicle, obtain a Florida driver license or Florida identification card, declare domicile, and register to vote, without regard to past or present physical presence in Clay County. You provide four scenarios each with slightly different facts as to whether these Mail Forwarding Service customers may register to vote in Clay County.

Division of Elections

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ANALYSIS

General Statement of Law

In order to become a registered voter in Florida, a person must, among other things, be a “legal resident” of a Florida county. § 97.041(1)(a)4., Fla. Stat. (2018). The Florida Election Code¹ does not contain a definition for “legal resident” or “legal residence.” Over the years, the courts and the Florida Department of State have construed legal residency.² “A legal residence is the place where a person has a fixed abode with the present intention of making it their permanent home.”³ *Perez v. Marti*, 770 So. 2d 284, 289 (Fla. 3d DCA 2000) (quoting *Walker v. Harris*, 398 So. 2d 955, 958 (Fla. 4th DCA 1981)); see also *Division of Elections Advisory Opinion* 16-01 (January 4, 2016). The determination of legal residence is fact-intensive and turns on the particular circumstances of each individual case. See *Bloomfield v. City of St. Petersburg Beach*, 82 So. 2d 364, 368 (Fla. 1955) (“[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”). After considering the totality of the circumstances, the Supervisor of Elections in the respective county determines whether applicants or registered voters are or remain legal residents of the county. See § 98.045(1)(h), Fla. Stat. (2018); § 98.075(7)(a), Fla. Stat. (2018).

Scenario 1

You ask whether a customer of the Mail Forwarding Service may be regarded as a legal resident of Clay County within the meaning of section 97.041(1)(a)3., Florida Statutes (2018), where, as proof of legal residency, the customer submits to you a copy of a Declaration of Domicile filed with the County Clerk of Court declaring residency in Clay County, and a Florida driver’s license containing either the address of the Mail Forwarding Service and the customer’s postal mailbox number, a license plate number, or a hull identification number of a recreational vehicle or boat. On the voter registration application, the customer includes a Florida driver license number or Florida identification card number, 1 Clay County as a residential address, and the mailing address of the Mail Forwarding Service with the postal mailbox number.

¹ Chapters 97-106, Florida Statutes.

² Where a person registers to vote may have implications for consideration in light of other duties, rights, and privileges under federal, state, or local laws which are outside the scope of this opinion.

³ The Mail Forwarding Service’s customer transiency or mobility is not at issue. It has been observed that, if taken literally, a definition of legal residence requiring intent to remain permanently may be unconstitutional to the extent that it would restrict voting to less mobile elements of the populous. *Williams v. Salerno*, 622 F. Supp. 1271, 1275 (S.D. N.Y. 1985). Accordingly, the Second Circuit holds that the definition ““is intended to approximate the test for domicile, *i.e.*, physical presence and an intention to remain *for the time at least.*”” *Auerbach v. Rettaliata*, 765 F. 2d 350, 351 (2d Cir. 1985) (quoting *Auerbach v. Kinley*, 594 F. Supp. 1503, 1507 n. 5 (N.D. N.Y. 1984) (emphasis added)).

As stated above, legal residency is a matter that must be decided by your office on a case-by-case basis after consideration of all the facts and circumstances of each individual case. No easy one-size-fits-all formula exists to determine whether customers of the Mail Forwarding Service are legal residents of Clay County.

However, the Division opines that, given the facts you have provided, it is unlikely that a customer of the Mail Forwarding Service is a legal resident of Clay County. First, neither the Declaration of Domicile⁴ nor the driver license alone prove legal residence in Clay County. You state that in the Declaration of Domicile, customers declare that they reside at 1 Clay County. However, 1 Clay County is not an address of legal residence. You indicate that, instead, 1 Clay County is a fictitious address used to designate your office in Clay County. The plain meaning of “residence” entails dwelling or living at a place.⁵ Because the Mail Forwarding Service’s customers do not in any sense live in your office, the Declaration of Domicile does not establish that the customer has a legal residence in Clay County.⁶

While a personal identifying number (*i.e.*, Florida driver license, a Florida Identification card number, or the last four digits of a social security number) is required for voter registration, the personal identifying number is to verify identity, not prove legal residence. You indicate that the driver license of these customers will bear either a vehicle license plate number, a hull identification number, or the address of the Mail Forwarding Service with a postal mailbox number. However, the Mail Forwarding Service is housed in a commercial building not used for residential purposes; people do not and cannot live in the building. Also, neither a vehicle nor a vessel may fairly be characterized as a “place where a person has a fixed abode” (*Perez*, 770 So. 2d at 289), those objects being by nature mobile. Therefore, under the circumstances you describe, the driver license does not establish legal residence. That is not to say that the definition of legal residence requires a residence made up of a four-walled dwelling. The definition is broad, encompassing a wide range of nontraditional abodes. A legal residence may even, for example, be

⁴ State law provides a means of “manifesting and evidencing domicile in Florida” through the filing of a sworn statement (or often referred to as “Declaration of Domicile”) for purposes of establishing homestead and exemptions. See section 222.17, Fla. Stat. The Florida Department of Legal Affairs is charged with prescribing the form for the declaration that are to be made available by the clerks of the circuit court in the State. The Declaration of Domicile is used for other purposes which may account for some of the slight differences that exist between the forms in some counties.

⁵ *Merriam-Webster Online Dictionary*, <http://www.merriam-webster.com/>, “residence.”

⁶ This conclusion is also consistent with the statute governing Declarations of Domicile, which, by its terms, contemplates only domicile at a place where a person lives. See § 222.17, Fla. Stat. (2018) (“Any person who shall have established a domicile in this state may manifest and evidence the same by filing in the office of the clerk of the circuit court for the county in which the said person shall reside, a sworn statement showing that he or she *resides in and maintains a place of abode* in that county which he or she recognizes and intends to maintain as his or her permanent home.”) (emphasis added).

a park bench,⁷ but cannot be a commercial mailbox.⁸ A residence plainly is not a place where people do not have a physical presence to reside.⁹

Second, you state, to the best of your knowledge, that the customers of the Mail Forwarding Service do not own property, have family, do business, visit, or otherwise spend time in Clay County. In fact, the customers appear to have never been to Clay County. Therefore, the customers do not have any meaningful contacts with Clay County indicating legal residence.

While these customers may have filed a Declaration of Domicile without a valid residential address, submitted a Florida Highway Safety and Motor Vehicle certification of address form, registered for a license plate or hull number, and obtained a driver license or identification card in Florida, these activities are insufficient to establish residency without a valid Florida legal residence for purposes of voter registration.

For the foregoing reasons and the circumstances outlined, the Division opines that the Mail Forwarding Service's customers in this scenario are likely not legal residents of Clay County for purposes of voter registration. Under the facts stated, the Declaration of Domicile and Florida driver license or Florida identification card, neither of which included a valid legal residential address, do not indicate legal residency.

Scenario 2

In this scenario, the Mail Forwarding Service's customer has not completed or filed a Declaration of Domicile but attempts to submit a voter registration application with a Florida driver license or Florida identification card number and with the Mail Forwarding Service's address and/or the customer's postal mailbox number, as evidence of legal residency. You further state that the person has never resided (and presumably never been registered in Florida or) in the county.

Since the Mail Forwarding Service customers have never resided or been registered in the county, the customers are unable to rely on section 101.045(1), Florida Statutes (2018), which provides as follows:

A person is not permitted to vote in any election precinct or district other than the one in which the person has his or her legal residence and in which the person is registered. However, a person temporarily residing outside the county shall be registered in the precinct in which the main office of the supervisor, as designated by the supervisor, is located when the person has no permanent address in the

⁷ See *Pitts v. Black*, 608 F. Supp. 696 (S.D. N.Y. 1984)

⁸ See *Teel v. Darnell*, 2008 WL 1751532, p. 3 (E.D. Tenn. 2008) (providing that mailbox within a commercial establishment was insufficient to establish residency for purposes of voter registration).

⁹ *Auerbach*, 765 F. 2d at 355.

county and it is the person's intention to remain a resident of Florida and of the county in which he or she is registered to vote.

(emphasis added). The Mail Forwarding Service's customers cannot be said to be temporarily residing outside the county under these circumstances without a prior or current valid legal residential address in Clay County. For the reasons discussed above, the person in this scenario is likely not a legal resident for purposes of voter registration.

Scenario 3

You ask whether a Mail Forwarding Service's customer is able to register to vote if he or she resides overseas without providing a legal residential address or legal address immediate to their departure from the U.S. In your scenario, you additionally offer that the overseas customer applies using a Federal Post Card Application¹⁰ ("FPCA") with the Mail Forwarding Service address and a postal mailbox number. The FPCA is a federal voter registration form available for use by absent stateside and overseas military and overseas U.S. citizens. The FPCA can also function dually as a request for vote-by-mail request once registered.

The fact that the Mail Forwarding Service's customer submits a federal voter registration form, as opposed to the national mail-in application form or the prescribed Florida voter registration form, does not change the analysis. The same requirements for eligibility, including legal residency apply. The question remains whether the Mail Forwarding Service's customer who has submitted a voter registration application is a legal resident of Clay County. A voter registration form providing a commercial address, whether the address of the Mail Forwarding Service or other business enterprise with a postal mail box number, without a valid legal residential address or other further evidence of current residency in Florida or evidence that Florida was the last state in which the customer resided before going overseas, is not sufficient to make a determination of legal residency.

Scenario 4

You ask whether a Declaration of Domicile filed with the clerk of circuit court is sufficient alone to establish legal residency for a Mail Forwarding Service's customer who submits a voter registration application without a Florida driver license or Florida Identification number (the person does include the last four digits of his or her social security number). Regardless of the personal identifying number provided on a voter registration application, the key again is that the customer is using the Declaration of Domicile to establish residency at a place where he or she did not, does not, and cannot actually live. The Declaration of Domicile alone does not prove legal residency.

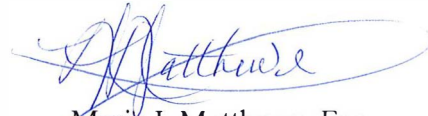
¹⁰ The FPCA is a federal form developed by the Federal Voting Assistance Program within the U.S. Department of Defense; Standard Form 76 (Rev. 09-2017), OMB No. 0704-0503.

As previously discussed, the common thread through the four scenarios is the lack of a valid residential address and no meaningful contacts indicating the requisite intent and physical presence in the county. The use of the Mail Forwarding Service and its advertised services alone including the Declaration of Domicile without a valid residential address are insufficient to satisfy the requirements for legal residency in Clay County for voter registration purposes.

SUMMARY

Customers of a private mail forwarding service who attempt to establish legal residency in a county by filing a Declaration of Domicile that fails to list a residential address or that lists a nonresidential address at which they do not reside and who have no other meaningful contact with the county other than using the services of this enterprise in the county to receive mail, secure a Florida driver license or Florida identification card, and obtain a license plate, or hull number for a boat, without having a past or present physical presence and intent to establish permanent residency in the county is not sufficient to establish residency for voter registration purposes and are most likely not legal residents of the county.

Respectfully,



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