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Advisory Letter 12-04

Hon. Richard G. Lugar
306 Hart Senate Office Building
Washington, D.C. 20510-1401

RE: Residency for Voting Purposes of United States Senators

Dear Senator Lugar:

You have requested from this office an opinion regarding whether a 1982 advisory letter provided to you by this office continues to correctly apply the Indiana Constitution and Indiana Code. Specifically, the letter in question concerns the residency status, for voting purposes, of United States Senators from Indiana.

BRIEF ANSWER

The analysis and conclusions in the 1982 advisory letter remain valid. Members of Congress do not lose their residency for voting purposes when they leave the state so that they may fulfill their duties.

ANALYSIS

Both the Constitution of Indiana and the Indiana Code contain provisions for determining who may vote in Indiana. The Constitution of Indiana, Article 2, Section 2(a) provides that "A citizen of the United States who is at least eighteen (18) years of age and who has been a resident of a precinct thirty (30) days immediately preceding an election may vote in that precinct at the election." The Code repeats these requirements in Ind. Code § 3-7-13-1, which states:

> A person who:
> (1) will be at least eighteen (18) years of age at the next general, municipal, or special election;
> (2) is a United States citizen; and
> (3) resides in a precinct continuously before a general, municipal, or special election for at least thirty (30) days;

may, upon making a proper application under this article, register to vote in that precinct.

The main requirement in both the Constitution and Code is residency. While the Constitution does not define "resident" or "residence," I.C. § 3-5-2-42.5 defines "residence" as "the place: (1) where a person has the person's true, fixed, and permanent home and principal establishment; and (2) to which the person has, whenever absent, the intention of returning." Additionally, I.C. § 3-5-5-2 contains three methods of establishing a residence: "(1) origin or birth; (2) intent and conduct taken to implement the intent; or (3) operation of law."

Once residency has been established for a person it is "presumed to continue." *State Election Bd. v. Bayh,* 521 N.E.2d 1313, 1317 (Ind. 1988). Establishing a new residence requires "an actual moving *with an intent* to go to a given place and *remain there.*" *Id.* (emphasis added). "[T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile."[1] *State ex rel. Flaugher v. Rogers*, 77 N.E.2d 594, 595-596 (Ind. 1948), citing *Hayward v. Hayward*, 115 N.E. 966 (Ind. Ct. App. 1917), *reh. den.,* 116 N.E. 746 (Ind. Ct. App. 1917). *See also* I.C. § 3-5-5-4 (abandonment of residence). Furthermore, residency does not require continual physical presence. *See Bayh*, 521 N.E.2d at 1316 ("We therefore have no reason to conclude from the constitutional language that residency requires continual physical presence"). Also, once a person establishes a residence that residency is not lost by reason of the person's absence if that absence was "on the business of this state or of the United States." Ind. Const. Art. 2 § 4[2]; *see also* I.C. § 3-5-5-5[3].

The Code and Indiana case law provide rules in helping to determine a person's residency by operation of law. The Code establishes several rebuttable "presumptions regarding the residency of a person." *See* I.C. § 3-5-5-6. These presumptions can only be rebutted by "demonstrating intent to reside in another precinct and conduct taken to implement the intent." *Id.*

While military personnel are generally those who come to mind when thinking about being absent from the state on "business of this state or of the United States," they are not the only individuals to whom this provision applies. A U.S. Senator for Indiana, or a U.S. Representative, in performing his or her duties in that capacity, is performing the business of

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[1] The Indiana Supreme Court has held that domicile and residence are synonymous. *See Bayh,* 521 N.E.2d at 1317.
[2] "No person shall be deemed to have lost his residence in the State, by reason of his absence, either on business of this State or of the United States."
[3] "As provided in Article 2, Section 4 of the Constitution of the State of Indiana, a person is not considered to have lost residence in a precinct in Indiana by reason of the person's absence on the business of: (1) the state of Indiana; or (2) the United States." Similar language was previously codified at I.C. § 3-1-21-3(10) and was referenced in the 1982 opinion.

Indiana and of the United States. Therefore, a person's service in the United States Congress does not cause that individual to lose his or her residency for voting purposes established by the individual prior to the person's departure for Congress.

You have served continuously in the U.S. Senate as an Indiana Senator since 1977. To the extent you have been absent from the state since that time, the absence has been directly related to the business of the state of Indiana and the United States. Therefore the residence you established in Indiana is not lost by reason of that absence pursuant to Ind. Const. Art. 2 § 4 and I.C. § 3-5-5-5. Should you retire, resign, or otherwise vacate the office, and continue to maintain a dwelling outside of the precinct or to otherwise demonstrate that you did not intend to return to the precinct in which residence had been established, then the operation of the constitutional and statutory provisions explained above would presumably be different. In other words, under this hypothetical you would no longer be absent on the business of the state of Indiana or the United States. Unless and until that occurs, applicable law provides that you have not lost your residency in Indiana for voting purposes as a result of your official service on behalf of the state.

CONCLUSION

The analysis and conclusions in the 1982 advisory letter remain valid. If a person has established residency for voting purposes in an Indiana precinct prior to his or her service in Congress, that residence remains the Congressperson's residence as long as he or she remains on the business of the state or the United States. A continual physical presence is not required in order to maintain his or her residency status.

Sincerely,

Matt Light

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