

OP. NO. 04-030

**CONSTITUTION OF VIRGINIA: FRANCHISE AND OFFICERS
(QUALIFICATIONS OF VOTERS).**

ELECTIONS: VOTER REGISTRATION.

Homeless residents of Commonwealth may register to vote in locality of Commonwealth, so long as they intend to remain in that locality for unlimited period of time.

The Honorable Janet D. Howell
Member, Senate of Virginia

The Honorable Linda T. Puller
Member, Senate of Virginia

The Honorable Mary Margaret Whipple
Member, Senate of Virginia

May 19, 2004

Issue Presented

You ask whether homeless residents of the Commonwealth may register to vote in a locality of the Commonwealth.

Response

It is my opinion that homeless residents of the Commonwealth may register to vote in a locality of the Commonwealth, so long as they have an intention to remain in that locality for an unlimited period of time.

Background

You observe that the Constitution of Virginia requires voters to be residents of the Commonwealth and of their voting precinct. You also note that the Constitution defines "residence" as domicile and place of abode.

You observe further that a 1992 opinion of the Attorney General concludes that the term "place of abode" should be construed to mean a "dwelling place."¹

You advise that, according to a 2003 committee report, emergency shelter and transitional housing programs were forced to turn away 46,610 persons during the year due to lack of bed space. As a result, thousands of people may have been without shelter in Virginia throughout the course of the year. You also observe that the lack of available shelter space means that thousands of homeless Virginia residents may not have a "dwelling place," a prerequisite to vote according to the 1992 opinion. You conclude that it appears that "residency" in the Commonwealth requires both domicile and place of abode—a dwelling place—which, if true, means that the homeless in Virginia may be disenfranchised under the current laws of the Commonwealth.

Applicable Law and Discussion

Article II, § 1, of the Constitution of Virginia provides:

[E]ach voter shall be a resident of the Commonwealth and of the precinct where he votes. Residence, for all purposes of qualification to vote, requires both domicile and a place of abode.

Section 24.2-400 provides:

Any person who is not registered to vote, but would otherwise be a qualified voter, is entitled to register to vote as provided in [Chapter 4 of Title 24.2].^[2] Any person who is registered to vote and is a qualified voter shall be entitled to vote in the precinct where he resides.

Section 24.2-417 provides:

Each registrar shall register every resident of his county or city who has the qualifications required by the Constitution of Virginia and this title and who applies for registration or transfer of his registration from another county or city in the Commonwealth at the time and in the manner required by law.

Section 24.2-101 states that the term "'residence' or 'resident,'" for purposes of qualifying to register and vote,

means and requires both domicile and a place of abode. In determining domicile, consideration may be given to a person's expressed intent, conduct, and all

attendant circumstances including, but not limited to, financial independence, business pursuits, employment, income sources, residence for income tax purposes, marital status, residence of parents, spouse and children, if any, leasehold, sites of personal and real property owned by the person, motor vehicle and other personal property registration, and other factors reasonably necessary to determine the qualification of a person to register or vote.

Following the 1992 opinion of the Attorney General, the Supreme Court of Virginia addressed the residency requirements for voter registration in the Commonwealth. In 1996, the Court decided that,

[b]efore an individual can qualify to vote in Virginia, he must be a resident both of the Commonwealth and of the locality in which he seeks to vote. "Residence, for all purposes of qualification to vote, requires both domicile and [a] place of abode." To establish domicile, a person must live in a particular locality with the intention^[3] to remain there for an unlimited time. A place of abode is the physical place where a person dwells.^[4]

The Court also determined that, for a voter to retain eligibility to vote in a particular locality, "the voter must continue to dwell in the locality with an intention to remain there for an unlimited time. A registrar may cancel a voter's registration if that individual does not continue to meet these requirements."⁵ The Court decided the 1996 case squarely on the provisions of Article II, § 1 and § 24.2-417 and, therefore, is binding authority. Consequently, I am required to conclude that homeless residents of the Commonwealth may register to vote in a locality of the Commonwealth, provided they intend to remain in the locality for an unlimited time.⁶

Conclusion

Accordingly, it is my opinion that homeless residents of the Commonwealth may register to vote in a locality of the Commonwealth, so long as they have an intention to remain in that locality for an unlimited period of time.

¹1992 Op. Va. Att'y Gen. 108 110.

²Chapter 4 of Title 24.2, §§ 24.2-400 through 24.2-447, comprises the statutory scheme governing voter registration.

³The term "intention" means "[t]he willingness to bring about something planned or foreseen; the state of being set to do something." Black's Law Dictionary 814 (7th ed. 1999).

⁴Sachs v. Horan, 252 Va. 247, 250, 475 S.E.2d 276, 278 (1996) (quoting Va. Const. art. II, § 1) (citations omitted).

⁵*Id.* (citing § 24.2-429) (citation omitted).

⁶The Registrars Handbook, promulgated and maintained by the State Board of Elections pursuant to § 24.2-103, advises local registrars of the Commonwealth to permit the homeless to register to vote "by using the site where they lay their head at night" as their residence. General Registrar and Electoral Board Manual ch. 9, ex. A, at 26 (Aug. 15, 2003) (on file with State Board of Elections).

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