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#92121

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STATE OF NEBRASKA
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DEPT. OF JUSTICE

DATE: November 9, 1992

SUBJECT: Residency Requirements of Executive Officers of the State.

REQUESTED BY: John Breslow, Auditor of Public Accounts

WRITTEN BY: Don Stenberg, Attorney General
Fredrick F. Neid, Assistant Attorney General

You request the opinion of the Attorney General regarding whether the location of your personal residence conflicts with provisions of Article IV, Section 1 of the Nebraska Constitution requiring residency of executive officers of the state at the seat of government. We conclude that location of your residence outside the corporate limits of the City of Lincoln does not offend constitutional and statutory provisions mandating residency at the seat of government.

The location and mailing address of the residence is 9315 Tuscan Court, Lincoln, Nebraska 68520, and the property is located in a residential subdivision in the easterly portion of the city generally known and described as "Firethorn." The legal description of the residential property is Lot Ten (10), Block two (2) Firethorn Addition, Lincoln, Lancaster County, Nebraska. The Firethorn development is outside the corporate limits of the city. Review of a map prepared by the City Planning Department reflects that the residential area is within one mile of the corporate limits. Generally described, the residential area lies within a quadrant bounded by Van Dorn Street and Pioneer Boulevard at the north and south sides, respectively; and by 91st and 98th streets at the east and west bounds of the quadrant. The area for the most part is contiguous with other residential areas located within and

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without the City of Lincoln. It is in light of these facts that we address the question you have asked.

Article IV, Section 1 of the Nebraska Constitution in pertinent part states:

> The executive officers of the state shall be the Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, Treasurer, Attorney General, and the heads of such other executive departments as set forth herein or as may be established by law. . . . The records, books, and papers of all executive officers shall be kept at the seat of government, and such officers, excepting the Lieutenant Governor and members of boards and commissions when the board or commission is the head of an executive department, shall reside there during their respective terms of office. . . .

(emphasis added).

The residency requirement for state executive officers was first included in the constitutional document prepared at the 1875 Constitutional Convention subsequently adopted by popular vote on October 12, 1875. The constitution framed by the 1871 Nebraska Constitutional Convention is the genesis of the present constitutional provision regarding residency of executive officers at the seat of government.[1]

Commentary and statements of members of the 1871 convention reflect that the primary reasons for mandating residency at the seat of government were to preclude removal of the capitol to another location, to facilitate the performance of duties at the capitol, and to establish one location to find officers and records of the state for the benefit of citizens. Proceedings of the 1871 Constitutional Convention, at 152-155 (statements of Messrs. Woolworth, Kirkpatrick, and Lake). The proceedings also indicate that the members were concerned about the ability of executive officers to perform their duties if they were not located in close proximity to the capitol. Following this discourse, an amendment

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[1]The constitution prepared by the 1871 Constitutional Convention was defeated at the polls and not adopted. However, this document is the model for the constitution framed at the 1875 convention and for this reason, the minutes of the 1871 convention are the most valuable existing commentary regarding the present constitution. Sheldon, Addison E. "Preface": Official Report of the Debates and Proceedings in the Nebraska Constitutional Convention, VI (1871).

to remove the residency requirements was withdrawn. *Id.* at 157 (statements by Messrs. Towle and Maxwell).

While the Nebraska Constitution mandates that executive officers, except the lieutenant governor, reside at the seat of government, the location of the seat of government is provided for by statute. Neb. Rev. Stat. § 72-701 (1990) states that "[T]he city of Lincoln is declared to be the permanent seat of government of the State of Nebraska, at which all the public offices of the state shall be kept and at which all the sessions of the Legislature shall be held." It is further required by statute that the Auditor of Public Accounts reside at the seat of Government. Neb. Rev. Stat. § 84-301 (1987) states that "[T]he Auditor of Public Accounts shall reside and keep his office <u>at</u> the seat of government." (emphasis added). Thus, it is clear that the Auditor of Public Accounts is required to reside at the seat of government, which has been statutorily declared to be the City of Lincoln.

The legal issue raised by your question is whether the Auditor of Public Accounts is in compliance with constitutional and statutory provisions which require residency at the seat of government. It is necessary to ascertain the meaning of the language, "at the seat of government," to address this issue. The Nebraska Supreme Court has held that the State Treasurer must reside and keep his office at the seat of government. ***State v. Hill***, 38 Neb. 698, 55 N.W. 794 (1894). Accordingly, it is established that state executive officers are required to reside at the seat of government which is statutorily declared to be the City of Lincoln.

The words and terms of the Constitution are to be interpreted and understood in their most natural and obvious meaning unless the subject indicates or the text suggests that they have been used in a technical sense. ***State ex rel. Johnson v. Chase***, 147 Neb. 758, 25 N.W.2d 1 (1946). In the interpretation of a constitution, its terms must be taken in their ordinary and common acceptation in such manner as to express the intent of the framers and of the people who adopted it. ***State ex rel. Morris v. Marsh***, 183 Neb. 521, 162 N.W.2d 262 (1968); ***State ex rel. Johnson v. Marsh***, 149 Neb. 1, 29 N.W.2d 799 (1947).

The Nebraska Supreme Court applied similar rules of interpretation to construe the word, "at", used in a statute requiring that summons be delivered personally or by leaving one at the usual place of residence. ***Bursow v. Doerr***, 96 Neb. 219, 147 N.W. 474 (1914). The court, in determining that service was proper by leaving a copy by or near the residence, stated:

> <u>Had the lawmakers intended to limit the meaning to "in", they would have used that word.</u> "At", in the language

> quoted, has a wider signification, referring evidently to a point in space. In this sense, some of the definitions given by the Standard Dictionary are: "In proximity to; in the vicinity or region of; close to; by; near." . . .

Id. at 221 (emphasis added).

Authorities in other jurisdictions have uniformly determined that the term, "at the seat of government" means nearness or proximity to, in reviewing the question in the context of the location of public facilities and departments of a governmental entity.[2] A leading case regarding the issue of the location of courthouse determined that the phrase, at the town of, is equivalent to near or in proximity to that place. ***Murdoch v. Klamath County Court***, 62 Or. 483, 126 P.6 (1912). The court in arriving at its decision noted that:

> . . . article 14, § 3, of the Constitution of this state provided "that all the public institutions of the state, hereinafter provided for by the legislative assembly shall be located at the seat of government." <u>The City of Salem is the seat of government of the State of Oregon; yet the penitentiary, insane asylum, and other state institutions were, under the organic law, erected outside the corporate limits of the capital city. . . .</u>

Id. 126 P. at 8 (emphasis added).

Other courts have reached similar conclusions regarding the term, "at", used in constitutional or statutory provisions when denoting place or location. In determining whether a courthouse was required to be located within the limits of the city designated the county seat, the court in ***Jordan v. Board of Supervisors***, 221 P.2d 977 (Cal. App. 1950) determined that the word "at", in referring to a place, means near to and not necessarily within. In a more recent California case concerning the location of a county civic center to include a courthouse facility outside original boundaries of the county seat, the court concluded that employment of the word, "at" by the legislature would indicate that it had no intention of requiring the courthouse to be in the then existing corporate limits. ***Ventura Realty Company v. Robinson***, App. 89 Cal. Repr. 117 (1970).

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[2]A related issue in determining compliance with constitutional and statutory residency requirements is whether location of government offices and officers outside the seat of government would constitute de facto removal of the seat of government.

Generally, courts have declined to adopt a narrow and restrictive interpretation of statutes requiring location at a particular place. In ***Fayette County Board of Education v. Tompkins***, 280 S.W. 114 (Ky. Ct. App. 1926) the court held that a statute mandating establishment of a school at the county seat did not require that the school be located within the corporate limits of the city of Lexington. Under the facts, the school was located 7/10 miles from the corporate limits. The court found that when the location is in close proximity to corporate limits of a county seat, the intention and purpose of the legislature to provide location convenient to the entire population of county is complied with and the requirement fulfilled. This case is further significant because that court observed that a school located "between six and seven miles from the corporate limits" could not in any sense be located at the county seat. ***Id.*** at 116.

There is a line of authority which has determined that the phrase, "in a town or city," when referring to the location of a government facility or other structure does not necessarily mean within the corporate limits. In a case involving the location of a college, the court in ***Rogers v. Galloway Female College***, 64 Ark. 627, 44 S.W. 454 (1898) held that a requirement that the college be located in a town did not necessarily mean within the corporate limits of the town. Similarly, courts have found that residences and lots, while not within corporate limits of a town, are located within a town for purposes of statutory requirements. The Arkansas Supreme Court observed that towns may have overgrown their limits and that one may dwell within the town and still be outside the corporate limits. ***Southeast Arkansas Levee Dist. v. Turner,*** 184 Ark. 1147, 45 S.W.2d 512 (1932). ***See Also First National of Owatonna v. Wilson***, 62 Ark. 140, 34 S.W. 544 (1896).

Based on these authorities, we believe the phrase, "at the seat of government," as used in the Nebraska Constitution, means "near" or "in close proximity to" the City of Lincoln. It is significant that we have found no authority that interprets statutory or constitutional provisions requiring residency or location "at the seat of government" to mean within the corporate limits of the town or city designated as the seat of government.

A purpose of the residency and location requirements of state executive officers and offices is to preclude de facto removal of the seat of government to another location. Art. XV, Section 12 of the Nebraska Constitution provides that the seat of government shall not be removed or relocated without the assent of the vote of a majority of the electors. It would seem that there is little or no risk that the seat of government would be removed by virtue of an executive officer residing outside of but in close proximity to the corporate limits of the city.

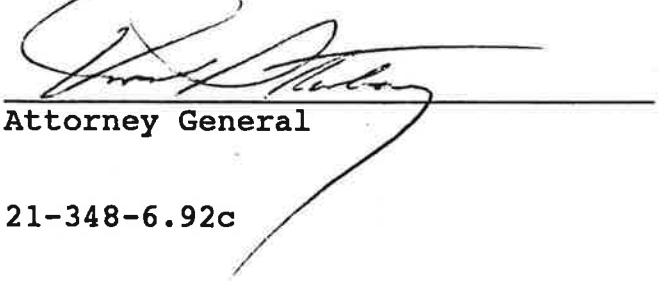
For these reasons, it is our opinion that the location of your personal residence does not result in violation of constitutional or statutory provisions requiring residency of state executive officers at the seat of government.

Sincerely yours,

DON STENBERG
Attorney General

Fredrick F. Neid
Assistant Attorney General

Approved By:



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