

**REPORT OF THE SPECIAL COMMITTEE
ON ELECTION CONTEST**

January 14, 2011

Mr. Speaker:

Your Special Committee appointed to hear the election contest for House District 45 respectfully reports back to the House as follows:

Based upon the findings set out in Attachment "A", it is the recommendation of the Special Committee that the election contest for House District 45 be Rejected and that Matthias Greene be determined qualified to serve as the Representative for House District 45.

Legislator	Aye	No	Absent	Excused	Conflict
Campbell	X				
Jaggi	X				
Kroeker	X				
Lubnau	X				
Petersen	X				
Stubson	X				
Barbuto		X			
Byrd		X			
Illoway		X			

Ayes = 6

Noes = 3

Total = 9

S/Illoway

Illoway, Chairman

**REPORT OF THE SPECIAL COMMITTEE
ON ELECTION CONTEST**

Attachment A

Issue:

It appeared to the special committee that the dispositive issue in this contest was:

Did Representative Matthias Greene (“Greene”) have residency in House District 45 for one year prior to the date of the election on November 2, 2010, in accordance with the Wyoming Constitution, and Wyoming Statute §22-5-102?

Findings of Fact:

1. Mark Voorhees, Rachel Lynn, Seth Carson , Craig Rothwell and Debra Formento, all residents of Wyoming House District 45, filed a notice to contest election on the 4th day of December, 2010, pursuant to Wyoming Statutes §22-17-101, W.S. §22-17-102 and §22-17-110.
2. Discovery was conducted pursuant to Joint Rule 15 of the Rules of the Wyoming Legislature.
3. On January 11, 2011, the Speaker of the House empanelled a special committee to take testimony and hear the arguments of the parties with respect to the election contest.
4. Former Representative Seth Carson (“Carson”) spoke on behalf of the contestants.
5. The facts in this matter are basically undisputed. A timeline is attached to this report as Exhibit 1.
6. Greene resided at 611 Mitchell, Unit #2, Laramie, Wyoming from August 2008 until May 25, 2009 in House District 13.
7. In March and April of 2009, Greene searched for a loft apartment in downtown Laramie. He expressed a desire to live in downtown Laramie because he likes the urban atmosphere, and he was within walking distance of the local restaurants and bars.
8. In April of 2009, Greene was notified that he was going to be deployed with the National Guard to Afghanistan to command a med-evac unit. At that time, he stopped his search for a downtown loft.
9. Greene acquired a mini-storage unit in House District 45 in May of 2009. He chose the location of the mini-storage based on the part of town it was located in and because of its convenience and it’s ownership by a veteran who gave military discounts. Greene testified he always intended to move back to House District 45, but did not select the location of the mini-storage with any intention at that time of running for election in House District 45, although the mini-storage was located in House District 45.
10. On May 25, 2009, Greene placed all his worldly possessions, including his bed, his dresser, most of his civilian clothing, weight set and his kitchen utensils in mini-storage unit owned by Snowy Range Storage, Inc., located at 1491 Industry Drive, Laramie, Wyoming, and within the boundary of House District 45.

11. Greene's lease expired on the apartment at 611 Mitchell, Unit #2, Laramie, Wyoming on May 25, 2009. At that time, all his contact with House District 13 ended. He had no property in House District 13, no intent to return to House District 13, and no mailing address in House District 13.
12. On May 27th, 2009, Greene was sent to Canada to train for two and one-half weeks.
13. After the two and one-half weeks of training, Greene returned to Cheyenne for one night, where he spent the evening in the Comfort Inn in Cheyenne.
14. After his one night stay in Cheyenne, Greene was sent to Camp Guernsey for an additional 10 days of training for his deployment.
15. For the month of July 2009, Greene was trained in high-altitude helicopter flying in Colorado.
16. On August 2, 2009, Greene's unit gathered in Cheyenne for deployment.
17. On August 5, 2009, Greene's unit was dispatched to Ft. Sill, Oklahoma for additional training.
18. On September 17, 2009, Greene was deployed to Afghanistan.
19. On September 18, 2009, Greene arrived in Afghanistan, and his primary residence was Forward Operating Base Solerno.
20. In November 2009, after reading a newspaper article in the Laramie Boomerang about Carson, Greene began to consider running for the position of House District 45.
21. Greene began contact with the Wyoming Secretary of State's office in December of 2009, from Forward Operating Base Solerno, to confirm his residency was in House District 45. Several phone calls and e-mails were exchanged regarding residency.
22. On February 19, 2010, Mr. Greene received electronic correspondence from the Wyoming Secretary of State's office, stating that according to the Wyoming Statewide Voter Registration System, Mr. Greene was still a registered voter of House District 13 and that being the case, the Wyoming Secretary of State's office would not approve an application of nomination for Wyoming House District 45.
23. On April 5, 2010, Mr. Greene completed the necessary forms to change his voter registration address from 611 Mitchell, Laramie, Wyoming, to 1207 Boswell Drive, Laramie, Wyoming.
24. On April 5, 2010, Greene changed his address in the statewide voter registration system to 1207 Boswell Drive, the home of Matthew Brian Leibovitz and Teresa Elizabeth Thompson. This change of address to House District 45 was for the purpose of voting in a special election – the first election held in the district since Greene's deployment.
25. On May 27, 2010, Greene filed for office, and provided the address of 1207 Boswell as his address in House District 45.
26. On June 17, 2010, Greene returned from his deployment to Cheyenne, Wyoming.
27. On June 24, 2010, Greene spent the night at the home of his friend Matt Leibovitz, at 1207 N. Boswell in Laramie, Wyoming.
28. On June 25 and 26, 2010, Greene spent the night in Ft. Collins, Colorado, visiting a friend.
29. On July 1, 2010, Greene signed a lease for a loft apartment at 115 E. Grand Ave, Laramie, Wyoming.

30. On June 27, 2010, Greene returned to the Leibovitz house, and stayed there until he moved into his loft apartment in downtown Laramie on July 2, 2010, at the address of 115 E. Grand Ave., Laramie, Wyoming within the boundaries of House District 45.
31. On November 2, 2010, Greene was the top vote getter in the general election for House District 45.

OPINION

The requirement of residency is a constitutional prerequisite for serving in the legislature of the State of Wyoming. The Wyoming Constitution provides that no person shall serve in the legislature who is not a citizen “of this state and who has not, for at least twelve months next preceding his election resided within the county or district in which he was elected.” Wyoming Constitution Art. 3 Sec. 2.

Section 22-5-102 of our statutes codifies the constitutional requirement by noting that “For the purpose of meeting the residency requirements of the Wyoming constitution, a person shall not be a candidate for the state legislature from a legislative district unless he has been a resident of that legislative district for at least one (1) year next preceding the election.” Wyo. Stat. Ann. § 22-5-102(a).

The Special Committee’s obligation is to determine whether Representative Matthias Greene meets these constitutional requirements. While the consideration of these issues takes place in the context of a political body, the members of the Committee have embarked on this endeavor with a clear recognition of their oath to support, obey and defend the Constitution of the State of Wyoming.

It is noteworthy that the Wyoming Constitution makes special provision for the residency of those serving the United States in our military. Specifically, the Constitution notes that “No elector shall be deemed to have lost his residence in the state, by reason of his absence . . . in the military or naval service of the United States.” Wyoming Constitution Art. 6 Sec. 7.

The facts underlying this contest are not significantly in dispute. In May, 2009 Matthias Greene was living at 611 Mitchell, Laramie, Wyoming, a residence located in House District 13. Representative Greene’s lease on Mitchell property terminated in late May 2009. Some time before the lease termination Representative Greene had decided to move to downtown Laramie which is located in House District 45. Prior to entering an agreement for a new apartment, Representative Greene learned of his imminent deployment to Afghanistan as part of the Wyoming National Guard. As a result, Representative Greene stored his goods in a storage unit located in House District 45, ceased his search for an apartment in downtown Laramie and began training for his ultimate deployment to Afghanistan.

As of the end of May, 2009, Representative Greene removed all his belongings from House District 13. He ceased receiving mail in the district. From that point on he had no right or entitlement to occupy any structure within the district.

The reasons behind Representative Greene’s decision to cease his apartment search are significant. Representative Greene had received orders to deploy to Afghanistan. The Wyoming Constitution mandates that Representative Greene did not lose his residency in the

State of Wyoming. Instead, his military service ensured that his residency was protected. As a result, we know that Representative Greene was a resident of either House District 13 or House District 45.

When examining this question the role of intent is significant. It is undisputed that Representative Greene intended to live in House District 45 and intended to return to House District 45 after his deployment. It is also undisputed that he formed that intent prior to his deployment. Objector contends that intent is not dispositive. The Committee agrees. Intent alone is not sufficient to build a basis for residency. However, intent must play a role in a review of the totality of the circumstances when determining the residency of a member.

Objector contends that Representative Greene remained a resident of House District 13 from May, 2009 until he returned to the country in June, 2010. Such an assertion defies both the law and common sense. After May 2009 Representative Greene had no connection whatsoever to House District 13. He testified that he did not intend to ever return to House District 13. The lease on 611 Mitchell had expired. Representative Greene removed all of his personal property from House District 13. He had no right to access or occupy any structure whatsoever within House District 13. To suggest that he remained a resident of House District 13 despite the lack of any remaining nexus to the District is to open possibilities of residency that eviscerate the principles embodied in our Constitution.

Applying these same principles to Representative Greene's contacts with House District 45 reveals a very different picture. Representative Greene's intent to live in House District 45 was accompanied by material and substantial acts. Representative Greene actively engaged in a search for housing prior to his deployment. He moved his personal belongings to the district. He took out a lease on a storage unit in the district. While the contacts with House District 45 are anticipatory, they are overwhelming in light of the lack of contacts with House District 13.

The very first election in Albany County following his departure from House District 13 occurred in May of 2010. Representative Greene voted absentee from Afghanistan in that election and voted as resident of House District 45. When Representative Greene returned from his deployment in June, 2010 he immediately returned to House District 45 and leased an apartment. When reviewing all the circumstances of this election contest, we see a continuity of conduct that weighs overwhelmingly in favor of a finding that Representative Greene was a resident of House District 45 beginning in late May or early June of 2009. This was more than one (1) year prior to the election of November, 2010. Representative Greene is qualified constitutionally to serve in the legislature of the State of Wyoming.

The fact of Representative Greene's popular election deserves some note. While no majority can undermine application of the Constitution, it is of significance that the people of House District 45 chose Mathias Greene as their representative and did so in light of broad publication of the facts outlined above. When there are two applicable interpretations of a provision within the Wyoming Constitution and one application undermines the will of the people while one supports the will of the people, that which recognizes the power of the voters should be sustained.

The contestant has relied heavily upon the opinion of the Attorney General dated November 1, 2010. The Committee finds that opinion to be unpersuasive. The Attorney General

relied primarily on the definition of “Residence” as that term is defined in Wyo. Stat. § 22-1-102(a)(xxx). That definition refers to a place of actual habitation. However, that term is not used to define a person’s eligibility for election. Instead, the legislature chose a different word “resident” to describe the eligibility requirement. It is inappropriate to take the definition of a word not utilized within a statute to rewrite the statute and insert requirements not required by statute. In addition, even if we were to rely upon the definition of “Residence” instead of the terms actually utilized in the statute, it speaks clearly of an “intention of returning”. There was absolutely no evidence that Representative Greene intended to return to House District 13. As a result, the very definition that the Attorney General employs undermines the contestant’s claims.

Joint Rule 15-1 (b)(3) provides: “The burden of proof is on the contestant to prove at least one of the grounds specified under W.S. 22-17-1010(a) by a preponderance of the evidence.” The uncontradicted testimony of Representative Greene was that he intended to live in House District 45. The contestants offered no additional proof countering the intent of Greene to live in the district. As a result, the contestant failed to meet his burden of proof, and the complaint must be rejected.

It is clear that absent the issuance of military orders, Representative Matthias Greene would have been physically present within House District 45. The Wyoming Constitution recognizes the special circumstances of this case where a person in service of their nation, leaves their home to serve. It is clear that in those circumstances an interested citizen should not be punished for their service, but should be treated as a continuing resident of this state. The majority of the special committee find that Matthias Greene intended to and in fact was a resident of House District 45 for more than one year prior to the election.

As a consequence the committee FINDS that the Contest of Election filed by Mark Vorhes, Rachel Lynn, Seth Carson, Craig Rothwell and Debra Formento should be REJECTED.

DISSENTING OPINION

The only question here is whether the facts demonstrate that Mr. Greene met the residency requirements for serving in the state legislature as outlined in Wyo. Const., art 3, § 2 and Wyo. Stat. Ann. § 22-5-102(a). A candidate is not qualified to run , “unless he has been a resident of that legislative district for at least (1) year next preceding his election.” Wyo. Stat. Ann. § 22-5-102(a). The legislature has defined residence in Wyo. Stat. § 22-1-102(a)(xxx). Under this provision of the statute, residence, for purposes of this case, is defined as:

“Residence” is the place of a person’s *actual habitation*. The construction of this term shall be governed by the following rules:

- (A) *Residence is the place where a person has a current habitation* and to which, whenever he is absent, he has the intention of returning;
- (B) A person shall not *gain* or lose residence merely by reason of his presence or absence while:...
- (IV) Stationed at or residing on a military reservation or installation

The sections omitted from the quotation above, include absences related to such things as educational study or other public service purposes. Thus, the same definition of residence governs all absences from home and military service is not in a separate category.

The Attorney General issued an informal opinion of the definition of “residence” for purposes of serving in the legislature on November 1, 2010. The basic conclusion of the Attorney General is that the residency statute is unambiguous and in order to establish residency, a potential candidate must have an “actual habitation” to meet the residency requirement. The Attorney General Opinion, which is attached to this Report for the convenience of the body as Exhibit 2, concludes “actual habitation” as applied to the definition of “residence” “means “a person’s dwelling or home which he actually occupied.”

The opinion, then walks through the steps to apply the statute to facts similar to those in this contested case. Having determined that “the touchstone” of the definition is “actual habitation,” the next step is to apply the provisions governing absence from a residence: “Then, if, for whatever the reason, a person is absent from that place for any period of time then the question becomes, ..., whether person possessed the subjective intent to return to his place of residence—i.e., a person’s place of actual habitation.” The Opinion then cites the example of a student who leaves for college, but has a home in Laramie County. The home in Laramie County remains the residence “as long as the person has the intent to return to that home.” The Opinion, then reaches the key conclusion relevant to this decision:

Since the statute defines “residence” as “actual habitation,” if a person temporarily leaves the state with the intent to return but to a different location within the state, his “residence,” for purposes of qualification as a member of the Legislature, must be the place he last actually physically resided. If not, then “residence” would not mean “actual habitation” and the statute’s *plain and unambiguous meaning would be negated.*

AG Opinion at 5.

Thus, under the AG Opinion, Mr. Greene, at the time his active military service resumed on or about May 27, 2009, needed to be a resident with an “actual habitation” in House District 45 and the intent to return to that residence. At the time he left for training in Canada, he had no “current habitation” in House District 45. The Attorney General Opinion does not allow Mr. Greene to declare a residency in House District 45.

Mr. Greene's interpretation of the statute is not supported by the plain language of the statute and as a result, should not be adopted by this body as our interpretation of the law. In essence, we are sitting as a court interpreting the statute and should be bound by the same strict interpretation of plain language as a court. This House should no more ignore the intent of the legislature, as represented in the words of the statute, than a court would. In fact, Mr. Greene provided no legal analysis in support of his statutory construction.

Some members of the committee questioned the analysis of the AG Opinion. It is not necessary to wholly agree with the AG’s analysis, although it follows traditional rules of statutory construction. Essentially, as we understood it, Mr. Greene’s interpretation of the statute at Section 102(a)(xxx)(A) ignores the “current habitation” language and suggests Mr. Greene can

rely solely on his “intent” to return to House District 45. This interpretation also disregards the overriding language of the definition that residence depends on “actual habitation.” Finally, it ignores the provision that when absent, a person “shall not gain or lose residence” by reason of service in the military. In essence then, the statute first requires establishment of residence at time of departure, and then, an establishment of intent to return.

A basic rule of statutory construction, familiar to all the attorneys in this House is that a statute will not be interpreted to render any language superfluous. Under Mr. Greene’s approach, “current habitation” has no application. Mr. Greene’s interpretation ignores this most basic method for construing our laws. It would be extremely ironic for this body to ignore statutory rules of construction designed to show deference to the will of the legislature and ensure the courts do not exceed their authority and rewrite the laws rather than interpret them. This House, like a court, has no authority to in effect, rewrite the statute through this case.

The difficulty here is that Mr. Greene appears to have had no “current habitation” when he left Laramie for his military training. It is undisputed, however, his last address at the time of his departure for training was in House District 13. Either this address was his “current habitation” for purposes of the statute, as suggested by the AG’s opinion, or he had no “current habitation.” Either way we cannot revise the statute to fit the facts of Mr. Greene’s unique circumstances. Mr. Greene made the choice to relinquish his residence, not find a new one, and place his possessions in storage—rather than in a residence. While it may seem harsh to suggest Mr. Greene had to maintain a home in Laramie during his deployment to meet the residency requirement for running for office, it is the result demanded by the statute.

Mr. Greene’s interpretation would allow any potential candidate to leave the state for whatever purpose—education, military, temporary federal appointment—and return to any legislative district and argue an intent to return to establish residency. For example, assume someone moved to Washington, DC for a couple of years to work for one of our Congressional leaders and to save money, did not maintain a Wyoming physical residence, but always planned to return home one day to run for office. Under the interpretation proposed by Mr. Greene, such an individual could come back and run anywhere in the county they left and perhaps, anywhere in the state. This result is bad for public policy and would lead to chaos in our elections. We cannot, as a body, authorize an interpretation that has the potential to cause all sorts of mischief in our electoral process.

Greene Timeline

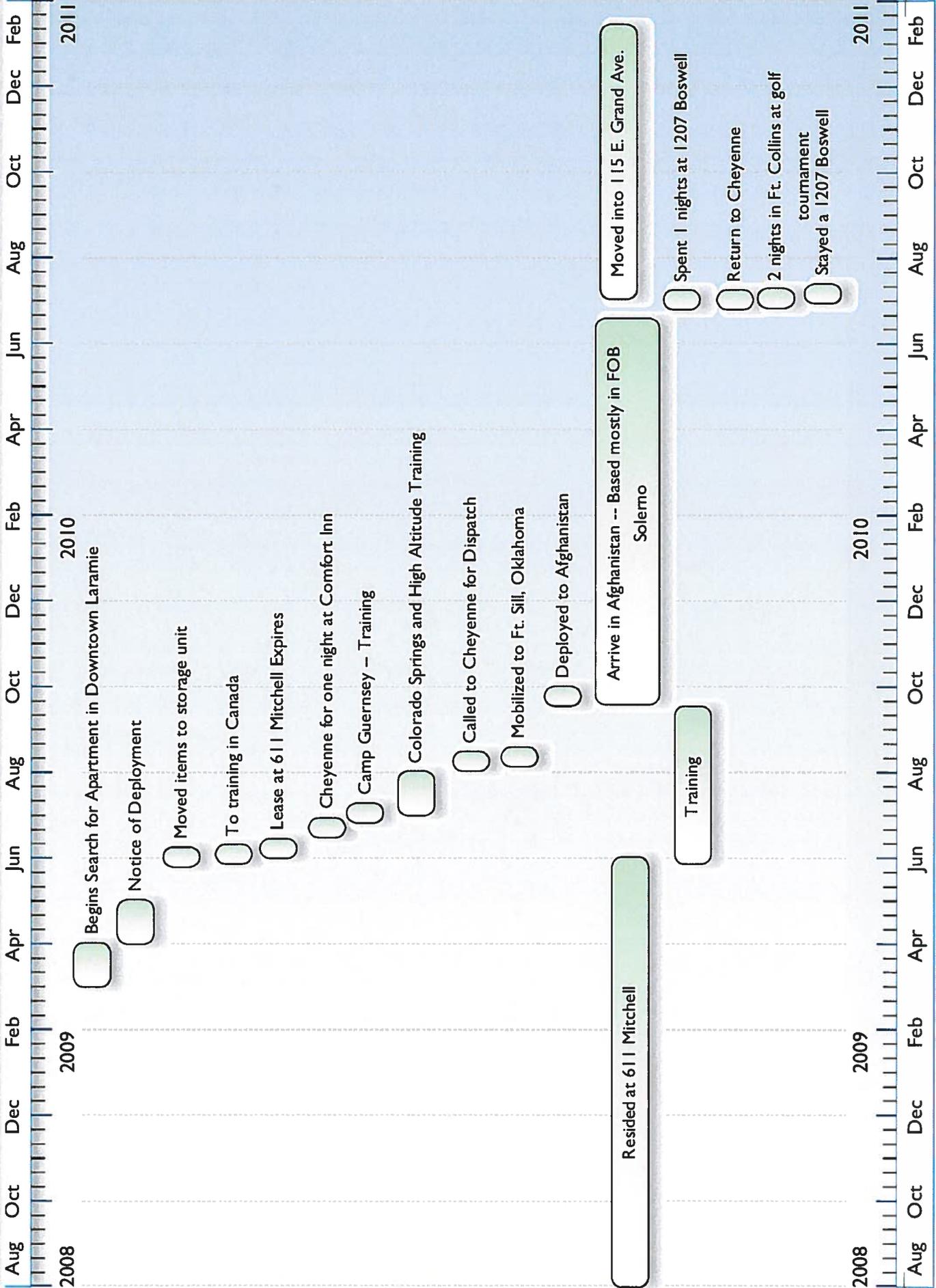


EXHIBIT 2



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November 1, 2010

PRIVILEGED AND CONFIDENTIAL

Representative Peter S. "Pete" Illoway
Wyoming House of Representatives
House District 42
839 Ridgeland Street
Cheyenne, Wyoming 82009

RE: Residency Requirements for Election to Wyoming House of Representatives

Dear Rep. Illoway:

You have requested an opinion regarding the meaning of "residency" in the context of the Wyoming Election Code (the Code).

DISCUSSION

What constitutes "residency" under the Code requires us to construe various statutory and constitutional provisions. This requires application of the well-known rules of statutory interpretation:

Our paramount consideration is the legislature's intent as reflected in the plain and ordinary meaning of the words used in

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the statute. Initially, we determine whether the statute is clear or ambiguous.

A statute is clear and unambiguous if its wording is such that reasonable persons are able to agree on its meaning with consistency and predictability. Conversely, a statute is ambiguous if it is found to be vague or uncertain and subject to varying interpretations. If we determine that a statute is clear and unambiguous, we give effect to the plain language of the statute.

[*Krenning v. Heart Mountain Irrigation Dist.*, 2009 WY 11, ¶ 9, 200 P.3d 774, 778 (Wyo. 2009)], quoting *RK v. State ex rel. Natrona County Child Support Enforcement Dep't*, 2008 WY 1, ¶ 10, 174 P.3d 166, 169 (Wyo. 2008). In interpreting a statute, we will not ignore other statutory provisions pertaining to the same subject but will, instead, consider all such provisions *in pari materia*. *Qwest Corp. v. Public Service Comm'n of Wyoming*, 2007 WY 97, ¶ 22, 161 P.3d 495, 501 (Wyo. 2007).

Horse Creek Conservation Dist. v. State ex rel. Wyo. Attorney Gen., 2009 WY 143, ¶ 14, 221 P.3d 306, 312 (Wyo. 2009).

It is understood that your inquiry arises in the context of potential electoral contests for seats in the Wyoming Legislature. Accordingly, our analysis will confine itself to a discussion of the concept of “residency” as a qualification for a member of the Legislature.

The concept of residency as a qualification to be a member of the state Legislature is enshrined in the Wyoming Constitution¹. To be a member of the Legislature, one must possess the following qualifications:

No person shall be a senator who has not attained the age of twenty-five years, or a representative who has not attained the age of twenty-one years, and who is not a citizen of the United

¹ The criteria for establishing residency for political office qualification may be quite different than the criteria for determining residency for voting, taxation or other purposes. This opinion is limited to the qualifications for public office and specifically those for membership in the state Legislature.

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States and of this state and who has not, for at least twelve months next preceding his election resided within the county or district in which he was elected.

WYO. CONST., art. 3, § 2 (emphasis added). This language is mirrored in the provision of the Code addressing eligibility to be a candidate for state legislature:

For the purpose of meeting residency requirements of the Wyoming constitution, a person shall not be a candidate for the state legislature from a legislative district unless he has been a resident of that legislative district for at least one (1) year next preceding his election.

WYO. STAT. ANN. § 22-5-102(a) (emphasis added).

The term “resided” as used in the Wyoming Constitution is not defined therein. The ordinary meaning of the term “reside” is “to dwell for a long time; have one’s residence; live (in or at)”. *Webster’s New World College Dictionary* 1219 (4th ed. 2005). Besides the plain meaning of the word (and of “resident” as used in the statute), we can turn to the Code for guidance as the Legislature has provided a definition of “[r]esidence:”

“Residence” is the place of a person’s actual habitation. The construction of this term shall be governed by the following rules:

(A) Residence is the place where a person has a current habitation and to which, whenever he is absent, he has the intention of returning;

(B) A person shall not gain or lose residence merely by reason of his presence or absence while:

(I) Employed in the service of the United States or of this state; or

(II) A student at an institution of learning; or

(III) Kept at a hospital or other institution; or

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(IV) Stationed at or residing on a military reservation or installation or at a transient camp maintained for relief purposes by the government of the United States in this state. No person shall be excluded as a voter solely because of his residence on a federal enclave within the state. This factor shall be considered with all others in the determination of the person's residence within the state for voting purposes.

(C) A person shall not lose his residence by leaving his home to go to another state, another district of this state, or to another country for temporary purposes, with the intent of returning, if he has not registered in the other state, district or country;

(D) A person shall not gain residence in a county if he enters it without the intent of making it his current actual residence;

(E) If a person removes to another state with the intent of making it his residence, he loses his residence in Wyoming; except that in a general election year, if his registration is valid in Wyoming when he leaves this state and he is unable to qualify under the laws of his new state of residence to vote at the primary or general election, he shall be deemed to have retained residence in Wyoming for purposes of voting by absentee ballot in the primary or general election;

(F) A person who takes up or continues his abode at a place other than where his family resides, shall be a resident of the place where he actually abides.

WYO. STAT. ANN. § 22-1-102(a)(xxx) (emphasis added).

The touchstone of the Code's definition of "residence" is "*actual habitation*." Since these two words are not also defined within the Code, we turn again to the dictionary:

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actual . . . existing in reality or in fact; not merely possible but real; as it really is . . . existing at present or at the time[.]

habitation . . . the act of inhabiting; occupancy . . . a place in which to live; dwelling; home[.]

Webster's New World College Dictionary 14, 637 (4th ed. 2005). Thus, the term "residence" when used within the Code means a person's dwelling or home which he *actually occupied* (i.e., in which he physically resided). This definition is consistent with the plain meaning of the term "resided" as used in the Wyoming Constitution noted above.

The question of residency as a qualification for membership in the state Legislature is thus actually quite unambiguous and straight-forward. The first step is to identify the person's place of "actual habitation." WYO. STAT. ANN. § 22-1-102(a)(xxx). Then, if, for whatever reason, a person is absent from that place for any period of time then the question becomes, under subsections (B) through (F) of WYO. STAT. ANN. § 22-1-102(a)(xxx), whether the person possessed the subjective intent to return to his place of residence – i.e., a person's place of actual habitation.

If, for example, a person resides in a home in Laramie County, Wyoming but then goes off to college in another state, the person's place of "actual habitation" is that home in Laramie County and, despite his absence; it remains so as long as the person has the intent to return to that home. WYO. STAT. ANN. § 22-1-102(a)(xxx)(C).

Since the statute defines "residence" as "actual habitation," if a person temporarily leaves the state with the intent to return but to a different location within the state, his "residence," for purposes of qualification as a member of the Legislature, must be the place he last actually physically resided. If not, then "residence" would not mean "actual habitation" and the statute's plain and unambiguous meaning would be negated.

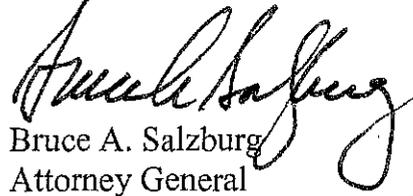
You note that there are countless ways to pose possible scenarios regarding what qualifies as residency. That is certainly true. However, the framework provided by the Legislature establishes specific criteria for determining – at least in the context of qualification for membership in the Legislature – residency that is relatively straight-forward in application. If the analysis described above is applied, then the determination of whether a person qualifies as a member of the Legislature is not a complicated process.

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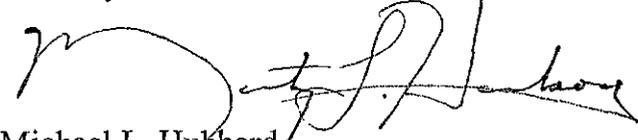
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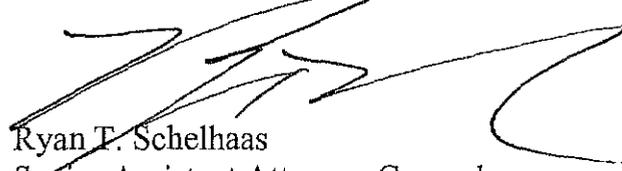
If you have any additional questions, or if this Office can be of further assistance, please do not hesitate to contact us.

Sincerely,

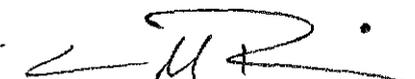


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