

OFFICE OF
THE COUNTY ATTORNEY
MONTGOMERY COUNTY, MARYLAND

Sept. 8
Elee.

Opinion No. 90.003
Date: March 30, 1990

Mr. Selig Freedman
1706 Noyes Lane
Silver Spring, Maryland 20910

RE: Interpretation of Montgomery County Charter Section 102;
Requirement for residency in councilmanic district

Dear Mr. Freedman:

This is in response to your letter requesting an interpretation of Section 102 of the Montgomery County Charter. A copy of your letter is attached. Specifically, you asked whether a person running for election to the County Council from a councilmanic district is required by Section 102 to live in the district from which the person is seeking election. For the reasons that follow, it is the opinion of this Office that Charter Section 102 requires those candidates running for election to the County Council from a councilmanic district to reside in the district they are seeking to represent. Residency must be established by the date of the primary election and maintained throughout the Council member's term of office.

In 1986, Section 102 of the Charter was amended to enlarge the Council from seven to nine members. (This amendment takes effect at the 1990 election.) Prior to this amendment, all seven Council members were elected by the voters on a county-wide basis. Starting with the 1990 election, four members of the Council will be elected by voters from the entire County; the five remaining members of the Council will be elected by councilmanic district. Charter Section 102 now reads as follows:

The council shall be composed of nine members, each of whom shall be a qualified voter of Montgomery County. Four councilmembers shall be nominated and elected by the qualified voters of the entire county. Each of the five other members of the council shall, at the time of election, reside in a different one of the five councilmanic districts of the county, and one of these five members shall be nominated and elected by the qualified voters in each councilmanic district. No member of the council shall hold any other office of profit in state, county or

municipal government. No member of the council shall be eligible for appointment during the member's term of office to any other office or position carrying compensation created by or under this Charter, except to county executive in the event of a vacancy. (emphasis added)

The language of Section 102 does not literally state that a member elected to represent a district must actually live in that district. However, this section does explicitly require that each of the five Council members elected to represent a councilmanic district reside in a different one of the five districts. That each of these five Council members must reside in the district from which they are elected is not only a necessary and logical implication to be drawn from that requirement, but it is also a conclusion supported by the commentary prepared to explain the intent of this Charter language.

Our present County Charter was adopted in 1968. At that time, Section 102 provided as follows:

The council shall be composed of seven members, each of whom shall be a qualified voter of Montgomery County. Council members shall be nominated and elected by the qualified voters of the entire county. Each of five members of the council shall, at the time of his election, reside in a different one of the five councilmanic districts of the county. No member of the council shall hold any other office of profit in state, county or municipal government. No member of the council shall be eligible for appointment during his term of office to any other office or position carrying compensation created by or under this Charter, except to county executive in the event of a vacancy. (emphasis added)

The commentary prepared on behalf of the County Council, dated July 10, 1968, provided this explanation of the Charter language:

This section restores the arrangement which existed prior to 1966 of requiring one Council member to reside in each of five districts and allowing the two remaining Council members to reside anywhere in the County.

The requirement in the present charter that a Councilman reside in the district from which elected for two years prior to the election

and during his full term of office is not carried over to the new charter. The new charter would require only that a Councilman elected from a district be a resident of that district at the time of his nomination and election.

The first sentence of Section 102 is intended to require that members of the Council shall continue to be qualified voters and therefore residents of Montgomery County during their entire term of office....
(emphasis added)

From this commentary, certain points are clear. Section 102 was intended to require that a Council member elected from a district be a resident of that district. In addition, residency in that district was required at the time of nomination as well as election.

In many respects, the language contained in the current Section 102 is the same as that which appeared when the Section was adopted in 1968.¹ For this reason, the 1968 commentary provides valuable insight in understanding the meaning and intent of this Section as it presently exists. In setting forth the residency requirement for Council members running for election from a councilmanic district, Section 102 states that these five members must "reside in a different one of the five councilmanic districts of the County." This is identical to the 1968 language. Not only did the 1968 commentary state that this language required that "a Councilman elected from a district be a resident of that district", but the Section has been consistently construed since 1968 to have that meaning. By retaining this language in the 1986 amendment, it is evident that no change to this requirement was intended.

The internal logic of Section 102's requirement that each representative of a councilmanic district live in a different district also supports our conclusion that the member must reside in the district from which elected. Admittedly, at first glance, this requirement would not seem to mandate that each member actually reside in the district from which elected. For example, it is theoretically possible to have a candidate who resides in District 1 elected to represent District 2 and a candidate who resides in District 2 elected to represent

¹Minor amendments to Section 102 were made in the 1982 election to delete the gender references used in the 1968 wording. No substantive changes to this Section were made.

District 1. The result would still be five Council members, with each living in a different district.

When this line of reasoning is extended, however, it becomes readily apparent why Section 102 must be construed to require that the Council member reside in the district from which elected. Without such a requirement, several variations are possible, some of which present significant potential Charter problems.² For example, it is reasonable to expect that there will be more than one candidate running for election in each councilmanic district. Candidates A and B may both be running for election in councilmanic district 1. Candidate A could reside in district 1; Candidate B could reside in district 2. Similarly, Candidates C and D could be running for election in councilmanic district 2. Candidate C could reside in district 1, while Candidate D resides in district 2. (For simplicity, we will assume that Candidate E resides in district 3 and is running in that district. Similarly, Candidates F and G reside in and run for election from districts 4 and 5, respectively.)

One of the possibilities is that Candidates A, D, E, F, and G will win election. There would be no inconsistency with Charter Section 102 because each of the five members elected would live in different districts. (Each would reside in the district from which elected.) A second possibility is that Candidates B, C, E, F, and G could win election. It could be argued that this outcome would not conflict with Charter Section 102. Candidate B would represent district 1, but reside in district 2. Candidate C would represent District 2, but reside in district 1. The result would still be that each of the five candidates elected would reside in a different councilmanic district.

²In the examples that follow, the candidates identified as candidates A through G live and run in the following districts:

	<u>Resides</u> <u>in District</u>	<u>Runs</u> <u>in District</u>
Candidate A	1	1
B	2	1
C	1	2
D	2	2
E	3	3
F	4	4
G	5	5

The problem becomes most evident if Candidates A, C, E, F, and G were to win election. In that event, Candidate A would be elected to represent district 1 and Candidate C to represent district 2. Both candidates, however, would reside in district 1. This election result could not be allowed to stand because of the conflict with Section 102. Such an outcome could potentially nullify the election of one or more district members. That result would be untenable.

It is one of the most fundamental principles of statutory construction that the law must be interpreted so as to avoid an absurd or unreasonable result. Kindley v. Governor of Maryland, 289 Md. 620, 426 A.2d 908 (1981); Kline v. Fuller, 56 Md.App. 294, 467 A.2d 786 (1983). Where more than one interpretation of a law is possible, the consequences that follow from each interpretation should be considered and the construction adopted should be the one that avoids an illogical or unreasonable result or one that is inconsistent with common sense. ANA Towing, Inc. v. Prince George's County, 314 Md. 711, 552 A.2d 1295 (1989).

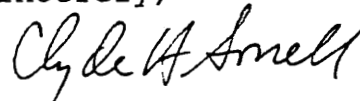
As the Court of Appeals recognized in Rasin v. Leaverton, 181 Md. 91, 28 A.2d 612, 143 A.L.R. 1021 (1942), the voters in each councilmanic district are entitled to know when their votes are cast that the person they select meets the prerequisites for the office. See also, Hummelshime v. Hirsch, 114 Md. 39, 79 A. 38 (1910). The results of an election in one councilmanic district cannot be made subject to the election outcome in one or more other districts. It is only if the candidates running in a councilmanic district all reside in that district that the voters can be assured that the winning candidate in that district will be able to take office, regardless of how the votes are cast in the other remaining districts.

Section 102 requires that a Council member running for election from a councilmanic district must reside in that district "at the time of election." The term "election" is unqualified in Section 102. Certainly the term is broad enough to encompass both election to office and election to a party nomination. The phrase "at the time of election" has been unchanged since the general charter revision of 1968. The 1968 commentary makes it clear that this phrase covers not only the day on which the general election is held, but also includes the time of nomination, i.e., the primary election when the representatives of each party are selected. Our conclusion that a council member running for election from a district must be a resident at the time of nomination is consistent with earlier Maryland case law which holds that a candidate may not delay establishment of residency until the point at which the candidate is ready to assume office. Rasin v. Leaverton, 181 Md. 91, 28 A.2d 612, 143 A.L.R. 1021 (1942); Spitzer v. Martin, 130 Md. 428, 100 A. 739 (1917).

Furthermore, Maryland case law also supports a conclusion that the member who represents a councilmanic district must maintain residency in that district throughout the member's term of office. Where the law "by its language provides qualifications for an office at the time of election or appointment 'such qualification is a continuing one; that is, it must subsist during the entire term of office.'" Dorf v. Skolnik, 280 Md. 101, 115, 371 A.2d 1094, 1102 (1977). Where residence is a prerequisite to a given office, a change of residence vacates that office absent a legislative expression to the contrary. Id., 280 Md. at 115, 371 A.2d at 1101.

In conclusion, it is the opinion of this Office that Section 102 of the Montgomery County Charter requires each of the five members of the County Council who are elected to represent a councilmanic district to reside in the district from which they have been elected. Their residency must be established by the date of their nomination, in other words, the date of the primary election and continue at the time of election. In addition, the Council member who represents a councilmanic district must continue to reside in that district after election in order to remain in office.

Sincerely,



CLYDE H. SORRELL
County Attorney

Enclosure

cc: Douglas L. Jernigan
Edmond Rovner
Arthur W. Spengler
Ben Bialek
Michael Faden

³The 1968 commentary from the Charter adoption does indicate an intent to remove a two year prior to election continuing residency requirement from Section 102. It is unclear from the commentary as to whether the 1968 charter was also intended to remove a continuing residency requirement after the election. As this intent was not expressly addressed in Section 102, however, we believe that the commentary language is insufficient to effect that change, as Dorf v. Skolnik, supra, seems to require that the Charter itself address this issue. (The statute construed in Dorf specifically provided that relinquishment of residency was to be considered a resignation from office.)