



Trustee Residency & Board Vacancy Process





Trustee Residency Requirements

- School board trustees must be residents of the districts they are elected to represent. Cal. Educ. Code § 35197(a).
- California law defines “residence” as the “place where one remains when not called elsewhere for labor or other special or temporary purpose.” Cal. Gov’t Code § 244(a).
- An individual can only have one legal residence at a time. Cal. Gov’t Code § 244(a).
- The critical element for determining residence is an individual’s intent. *Mauro v. Dept. of Mental Hygiene* (1962) 207 Cal. App.2d 381, 389.



Trustee Residency Precedence

- Courts will factor in the individual's physical presence to determine her residence. *Fenton v. Board of Directors* (1984) 156 Cal. App.3d 1107, 1113.
- Courts will also look at additional elements, including where the individual is registered to vote and his/her/their address for mail (*Ballf v. Public Welfare Department* (1957) 151 Cal.App.2d 784, 788-89); where the individual's tax returns are filed (*Johnson v. Johnson* (1966) 245 Cal.App.2d 40, 44), and where the individual's automobile is registered (8 Ops. Cal. Atty. Gen. 221 (1946)).



Trustee Residency Considerations

- A member of the public that believes an elected official does not meet residency requirements and seeks to remove the official must first receive approval from the California Attorney General's Office to initiate a *quo warranto* action.
- The Attorney General's Office looks at the same factors as courts do in determining an individual's residence and has denied leave for *quo warranto* actions where an elected official is *likely* to meet the residency factors. 72 Ops. Cal. Atty. Gen. 8 (1989).
- It is unlikely that the Attorney General would approve the initiation of a *quo warranto* action in this matter; they would likely deny it because, as noted, the Trustee in question meets residency requirements based on the totality of circumstances.



County Counsel Analysis

Based on the facts:

- Trustee Murray's landlord requested she temporarily leave her residence but she will return to her original residence once the work is completed (which is expected to be within 30 to 45 days).
- Trustee Murray and her landlord have agreed to terms that will allow her to sign a new lease for the residence upon completion of the work.

It is our opinion that under the totality of the circumstances, **Trustee Murray's residence has not changed, and she can retain her position.** Based on current case law and Attorney General Opinions, **her temporarily relocation from her elected Trustee Area does not prevent her from retaining her elected position in her Trustee Area.**



Timelines for Filling a Vacancy

A vacancy on the Governing Board may occur for any of the following events:

- A death, an incapacitation challenge, a resignation, excessive absences, conviction of a felony, or a board member ceasing to be an inhabitant of the state or resident of the district. (Cal. Gov't Code § 1990.)
- When a vacancy occurs, the Board shall take the following action, as appropriate:
 1. When a vacancy occurs four or more months before the end of a Board member's term the Board shall take no action. (Cal. Educ. Code § 5093.)
 2. When a vacancy occurs four or more months before the end of a Board member's term, the Board shall, within 60 days of the date of the vacancy or the filing of the member's deferred resignation, either order an election or make a provisional appointment, unless a special election is mandated as described in item #3 below.
 3. When a vacancy occurs from six months to 130 days before a regularly scheduled Board election at which the position is not scheduled to be filled, a special election to fill the position shall be consolidated with the regular election. The person so elected shall take office at the first regularly scheduled Board meeting following the certification of the election and shall serve only until the end of the term of the position which he/she/they was elected to fill. (Cal. Educ. Code § 5093.)

When a special election is required the Board may make a provisional appointment. (Cal. Educ. Code §§ 5091, 5093.)

