



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

**Josh Kaul
Attorney General**

17 W. Main Street
P.O. Box 7857
Madison, WI 53707-7857
www.doj.state.wi.us

December 9, 2020

VIA E-MAIL (kmcdaniel@manitowoc.org)

Ms. Kathleen M. McDaniel
Manitowoc City Attorney
900 Quay Street
Manitowoc, WI 54220

Dear Ms. McDaniel:

I am responding to your November 10, 2020, electronic submission to Attorney General Josh Kaul regarding the residency of Manitowoc's Alderperson for District 7, Aaron Bailey. Along with your e-mail message, you attached an undated letter from Jon Fessler to the Manitowoc Common Council.

The residency requirements for holding office are the same as the residency requirements for voting. Under the elections statutes, Wis. Stat. § 6.10(1), "residence" is defined as "the place where the person's habitation is fixed, without any present intent to move, and to which, when absent, the person intends to return." Because residency is based on the intent of the individual, it is not always a black-and-white issue and would not necessarily be determined by where an individual sleeps on a given night.

Wisconsin law provides a way for individuals to challenge the residency of elected officials in Wis. Stat. § 8.28:

8.28 Challenge to residency qualifications.

(1) Any individual who believes that an individual holding or elected to state or local office is not a resident or inhabitant of this state or of the jurisdiction or district in which he or she serves, whenever such qualification is required by the constitution of this state or by any applicable law, may file a verified complaint with the attorney general alleging such facts as may cause him or her to believe that the individual is not qualified to hold office because of failure to meet a residency requirement.

Ms. Kathleen M. McDaniel
December 9, 2020
Page 2

(2) The attorney general may thereupon investigate whether such allegations are true. If the attorney general finds that the allegations of the complaint are true or for any other reason finds that the subject person who is holding or elected to office is not qualified because of failure to meet a residency requirement, the attorney general may commence an action under ch. 784 for a writ of *quo warranto* to have the subject person's office declared vacant or to restrain any person not entitled to take office from assuming it. In the case of a person who is elected to office in the legislature, the clerk of court shall transmit a copy of the judgment to the presiding officer of the appropriate house, and the house shall determine whether the person is qualified to be seated or whether a vacancy exists.

Should someone wish to challenge the residency of Alderperson Bailey, he would need to file a verified complaint with the Attorney General under Wis. Stat. § 8.28(1) stating all the facts causing him to believe that Alderperson Bailey is not a representative of the district. A verified complaint is one in which the complainant swears under oath that the allegations made are true.

Upon submission of a verified complaint, the Attorney General "may thereupon investigate whether such allegations are true," and, if the Attorney General finds the allegations to be true, "may commence an action under ch. 784 for a writ of *quo warranto*." Wis. Stat. § 8.28(2). The statute's use of the word "may" indicates that the Attorney General has discretion as to whether to initiate an investigation and, should the allegations be true, whether to file an action for a writ of *quo warranto*. In order to exercise that discretion, the Attorney General would need to review the allegations in a verified complaint before deciding whether either an investigation or an action for a writ of *quo warranto* would be warranted.

Thank you for contacting us.

Sincerely,



Clayton P. Kawski
Assistant Attorney General

CPK:jrs