September 16, 1955.

MR. MAURICE D. MCBRIDE, *Chairman,*
Union County Board of Elections,

Court House,
Elizabeth, New Jersey.

MEMORANDUM OPINION P-26.

DEAR MR. MCBRIDE:

Receipt is acknowledged of your inquiry requesting our opinion as to the operation and effect of the 1955 election statute, which authorizes the Commissioner of Registration, upon application in writing, to register any incapacitated voter at his place of residence or confinement.

The statute limits such registration to those voters who are chronically or incurably ill, or totally incapacitated and unable to attend a place of registration, and requires each such application be accompanied by a physician's affidavit certifying to such fact, and further, that such voter is mentally competent and cannot attend a place of registration.

You seek a construction of the statute and submit two queries as to your jurisdiction in the administration thereof. They are:

1. Is it the intent of the new amendment to R. S. 19:31-6 to take a registration of a Union County resident who may be confined in another County or outside of New Jersey; and

2. May the County Board designate a proper person in another County or outside of the state to take such registration.

The 1955 act is an amendment to Section 19:31-6 of the Revised Statutes (Election Law) concerning municipalities having permanent registration and provides:

> "When any person shall apply to the commissioner in writing setting forth that due to a chronic or incurable illness, or that he is totally incapacitated and he cannot attend a place of registration and such application is accompanied by an affidavit by a physician duly licensed to practice medicine in this State certifying that such person is chronically or incurably ill or totally incapacitated, that such person is mentally competent and that such person cannot attend a place of registration, then the commissioner shall cause such person to be registered at his place of residence or confinement."

The 1955 amendment is but an extension of the method of registration provided by R. S. 19:31-6.

Where, heretofore, registrations might be taken during office hours at the office of the commissioner, or at such other place or places as might be designated, they may now be additionally taken at the place of residence or confinement of the incapacitated voter.

It will be noted that the enlarged statute limits both the commissioner of registration and the several county boards, in their respective jurisdictions, both as to the manner and method of registration, by directing that "The Commissioner shall cause such person to be registered at his place of residence or confinement." "Residence" is a well defined term in the election law and means the fixed domicile or permanent home, and once obtained, continues without intermission until a new one is gained. *Brueckmann v. Frignoca,* 152 A. 780, 9 N. J. Misc. 128.

The best evidence of a voter's residence are his acts rather than his declarations concerning his residence. It is not sufficient to merely designate an address as a "voting residence" since the residence must be real, actual and positive, and to be a "voting residence" there must be not only the intention of having the address for the purpose of voting, but that intention must be accompanied by acts of living, dwelling, lodging or residing sufficient to reasonably establish that it is the real and actual residence of the voter. *Jacobsen v. Gardella,* 38 A. 2d 126, 22 N. J. Misc. 277.

Therefore, registrations must be taken at the domicile or place of residence of the incapacitated voter and within the county in which he claims his vote.

With respect to his place of confinement it must likewise be within the county in which the vote is claimed and within the jurisdiction of the county board of elections.

R. S. 19:6-17 and R. S. 19:6-18, among other things, provide:

"19:6-17. The county board shall consist of four persons, who shall be legal voters of the counties from which they are respectively appointed. * * *"

"19:6-18. The Chairman of the State Committee of each of such two political parties shall during the month of February in each year, in writing, nominate one person residing in each county, duly qualified for member of the county board in and for such county. * * *"

The 1955 act nowhere indicates a legislative purpose to authorize or permit county boards of election to function beyond their respective county limits. The county board is a statutory creation, and all of its powers must be found in the statute.

Had it been the legislative intent to vest the several county boards with statewide as well as out-of-state powers of registration, the statute would have so provided. While election laws are to be liberally construed so as to effectuate their purpose. *Carson v. Scully.* 89 N. J. L. 458, 465 (Sup. Ct. 1916) affirmed, 90 N. J. L. 295 (E. & A. 1917), the 1955 statute should not be construed to confer an over-lapping county jurisdiction in the absence of clear and explicit language to that effect.

Yours very truly,

GROVER C. RICHMAN, JR.,
Attorney General.

By: JOSEPH LANIGAN,
Deputy Attorney General.

jl/d