STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

ATTORNEY GENERAL OPINION 14-1

To: Zachary Pall
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Per Request for Attorney General's Opinion

QUESTION PRESENTED

Are individuals under commitment to the Department of Health and Welfare pursuant to Idaho Code §§ 66-317, *et seq.,* entitled to register as voters in the counties where they have been dispositioned, assuming they have remained in the county for at least thirty days?

CONCLUSION

Individuals who have been committed as involuntary patients pursuant to Idaho Code §§ 66-317, *et seq.*, to a facility located in a county other than their county of residence before commitment do not become eligible to register to vote in the county of their commitment solely on the basis of their commitment to such a facility in the county.

ANALYSIS

This formal opinion addresses the county in which a person committed to a facility for treatment of the mentally ill may register to vote and/or vote while committed to such a facility. The terms "facility," "mentally ill" and "involuntary patient" are defined in Idaho Code section 66-317 and take their meaning from that section. This analysis assumes that the Question Presented addresses individuals:

(1) who (a) were or have become qualified electors registered to vote, or (b) were or have become eligible to become qualified electors registered to vote,
(2) in the county in which they were resident at the time that they were committed to another county to a facility defined in Idaho Code section 66-317 and
(3) there was or is no intervening event that prevents them from (a) continuing to be qualified electors registered to vote in Idaho, or (b) from becoming qualified electors registered to vote in Idaho,

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(4) since they are committed to such a facility.

In other words, this analysis assumes that the individual at issue was eligible to vote or eligible to register to vote somewhere in Idaho, but not in the county in which the facility is located.

The starting point in this analysis is the Idaho Constitution.

- Art. VI, sec. 2, provides that every citizen of the United States who is 18 years old "who has resided in this state and in the county where he or she offers to vote for the period of time provided by law, if registered as provided by law, is a qualified elector."
- Art. VI, sec. 5, provides that, "For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence . . . while kept at any alms house or other asylum[1] at the public expense."
- Art. VI, sec. 4, provides that the legislature "may prescribe qualifications, limitations, and conditions for the right of suffrage, additional to those prescribe[d] in this article, but shall never annul any of the provisions in this article contained."

Taking these three sections together, sec. 2 establishes that a citizen's ***residence*** in the state and a county create a right to register to vote in that county and to vote if registered; sec. 5 provides that a person is not deemed ***to gain or lose residence*** while kept in an asylum at public expense; and sec. 4 allows the legislature to prescribe additional qualifications, limitations and conditions for voting that do not annul these provisions. The plain language of these sections of Art. VI of the Idaho Constitution leads to the conclusion that commitment to mental health facilities does not by itself change one's residence to the county in which the facility is located.

Statutes reinforce these constitutional provisions. Idaho Code § 34-104 provides a general rule that defines a "qualified elector" as a citizen 18 years or more of age "who has resided in this state and in the county at least thirty (30) days next preceding the election at which he desires to vote, and who is registered as required by law." Idaho Code § 34-107 defines "residence" for voting purposes as the principal or primary home or abode to which even an absent person intends to return:

> **34-107. "Residence" defined. —** (1) "Residence," for voting purposes, shall be the principal or primary home or place of abode of a person. Principal or primary home or place of abode is that home or place in which his habitation is fixed and to which a person, whenever he is absent, has the present intention of returning after a departure or absence therefrom, regardless of the duration of absence.
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> (2) In determining what is a principal or primary place of abode of a person the following circumstances relating to such person may be taken into account: business pursuits, employment, income sources, residence for income or other tax pursuits, residence of parents, spouse, and children, if any, leaseholds, situs of

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[1] As used in the Constitution of 1889, asylum probably had a meaning that dictionary.reference.dot now describes as dated: "*obsolete* an institution for the shelter, treatment, or confinement of individuals, esp. a mental hospital (formerly termed **lunatic asylum**)." *See* http://dictionary.reference.com/browse/asylum?s=t. *See* also Webster's Ninth New Collegiate Dictionary, "**4**: an institution for the relief or care of the destitute or afflicted and esp. the insane," p. 111 (1983). The facilities defined in Idaho Code § 66-317 would thus be included in what art. VI, sec. 5 calls an asylum.

personal and real property, situs of residence for which the exemption in section 63-602G, Idaho Code, is filed, and motor vehicle registration.

(3) A qualified elector who has left his home and gone into another state or territory or county of this state for a temporary purpose only shall not be considered to have lost his residence.

(4) A qualified elector shall not be considered to have gained a residence in any county or city of this state into which he comes for temporary purposes only, without the intention of making it his home but with the intention of leaving it when he has accomplished the purpose that brought him there.

(5) If a qualified elector moves to another state, or to any of the other territories, with the intention of making it his permanent home, he shall be considered to have lost his residence in this state.

Subsections (1), (2) and (4) strongly suggest that a person involuntarily committed to a facility does not meet the criteria for residency in the facility's county.

- Under subsection (1), it is doubtful that a place of involuntary commitment will become "the principal or primary home or place of abode . . . to which [an involuntarily committed] person . . . has the present intention of returning after a departure or absence" by reason of the commitment.
- Under subsection (2), it is doubtful that an involuntarily committed person has changed his or her "business pursuits, employment, income sources, residence for income or other tax pursuits, residence of parents, spouse, and children, if any, leaseholds, situs of personal and real property, situs of residence for which [a homestead exemption] is filed, and motor vehicle registration" by reason of the commitment.[2]

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[2] The Idaho Secretary of State's office has many publications that provide useful information for assessing residency or domicile for purposes of voter registration. Although these publications do not have the force and effect of law, they provide practical guidance on determining voting residency. The publication, "*Students and Voting*" poses many questions that are also relevant for persons committed to a facility:

> Some of the factors which may be relevant in determining whether domicile has been established for voting purposes by a student, as well as any other applicant, are as follows:
> (1) Has the applicant registered to vote elsewhere?
> (2) If married, where does his or her spouse reside?
> (3) Where does the applicant keep his personal property?
> (4) Does the applicant have any community ties to the locale he claims as his domicile–membership in church, social or service clubs, etc?
> (5) Where does the applicant maintain his checking and saving accounts, if any?
> (6) Where does the applicant pay taxes, and what address did he list as his residence on his last income tax return?
> (7) What is the residence listed on the applicant's driver's license?
> (8) If the applicant owns an automobile, where is it registered?
> (9) If the applicant is employed, where is his job located?
> (10) Does the applicant live year round at his claimed domicile, or does he divide it elsewhere? If it is divided, how much time is spent elsewhere and for what reason?
> (11) What residence does the applicant list on his selective service registration, hunting or fishing licenses, insurance policies, or other official papers and documents which required a statement of residence or address?

http://www.idahovotes.gov/VoterReg/Students_Voting%20Residency.htm (visited Feb. 24, 2014). Except in very unusual cases, the answers to these questions would not point to establishment of residency for voting purposes in the county of the facility.

- Under subsection (4), it is also likely that a committed person has gone to a facility "for temporary purposes only, without the intention of making it his home but with the intention of leaving it when he has accomplished the purpose that brought him there."

If these subsections were not sufficient to show that involuntary commitment is unlikely to lead to a change in residency for voting, section 66-325 of the title and chapter of the Idaho Code on hospitalization of the mentally ill lays the issue to rest:

> **66-325. Residence not affected by place of treatment.** — For purposes of this chapter, the terms "residence," "residing," or "resides" shall refer to the place where the mentally ill person lives. None of the time spent in any facility shall be regarded as contributing toward, or acquiring, residence for any purpose.

From these statutes, I conclude that involuntarily committed residents of facilities described in Idaho Code section 66-317 do not acquire the right to register to vote in the county in which the facility is located simply by spending 30 days at the facility.

That does not mean there could never be circumstances unrelated to the involuntary commitment that might give such a person the right to vote in the county of the facility. For example, using the criteria of Idaho Code § 34-107(2), if an involuntarily committed person was living with a family and intended to return to that family and the family moved to the county of the facility, found jobs in that county, bought a home in that county, and changed the site of their motor carrier registration to that county, it is likely that the involuntarily committed person's family had established sufficient ties to the community that the involuntarily committed person could "piggy back" upon the family's relocation and register as a voter in the county. But that ability to change the county of voter registration would be not based upon a period of commitment to a facility within the county, but upon other factors unrelated to the commitment.

Lastly, this opinion addresses the case of Hawkins v. Winstead, 65 Idaho 12, 138 P. 972 (1943), which construed art. VI, sec. 5, in particular the following portions of that section: "For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service . . . of the United States . . . ". Hawkins was not a voting rights case; it presented the question of whether a person serving in the armed forces and assigned to a base near Boise could acquire residence in Ada County for purposes of filing for divorce. The Idaho Supreme Court observed that this constitutional provision for voting residence did not control residency for purposes of divorce. 65 Idaho at 15, 138 P. at 973. Hawkins then held that the soldier, who had received permission to live off-base in Boise and who in fact lived off-base, had established residency for purposes of the divorce statutes.

Although Hawkins was a divorce case, nevertheless, it overruled Powell v. Spackman, 7 Idaho 692, 65 P. 503 (1901), which held that a veteran's home was an alms house for purposes of voting residence under art. VI, sec. 5: "[*Powell*] was wrong in that it placed veterans living at the Soldiers' Home on a level with paupers living in an alms house. Such veterans were not, and the veterans now living at the Soldiers' Home, are not, paupers, and we refuse to brand them as such." 65 Idaho at 18, 138 P. at 974.

Whatever else can be said about Hawkins, it is not case law that a person can become a resident of a county simply by being involuntarily committed to a mental health facility in the county. Hawkins did not address the effect of involuntary commitment to an asylum on voting residence; it addressed whether a soldier's home was an alms house. Hawkins is not authority that art. VI, sec. 5, does not continue to apply for those committed to "asylums" (using art. VI's nineteenth century language) or "facilities" (using Idaho Code § 66-317's twenty-first century language).

For all of these reasons, I conclude that individuals who have been committed as involuntary patients pursuant to Idaho Code §§ 66-317, *et seq.*, to a facility located in a county other than their county of residence before commitment do not become eligible to register to vote in the county of their commitment solely on the basis of being in the county during their term of commitment.

Dated this 3rd day of March, 2014.

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Analysis by:

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