

EXPANDED WRITTEN DECISION OF MADISON COUNTY HEARING BOARD

ON PETITION TO VACATE THE MADISON COUNTY BOARD OF SUPERVISOR SEAT OF AARON PRICE

I. FINDINGS OF FACT

On January 15, 2020, Madison County, Iowa received a Petition signed by at least twenty-five (25) Madison County registered voters to set a public hearing to determine if a vacancy exists for the position of Madison County Supervisor held by Aaron Price pursuant to Iowa Code Section 69.2. The Petitioners alleged that Mr. Price was no longer a resident of Madison County and that his seat on the Madison County Board of Supervisors should be vacated. A public hearing was held at 10:00 a.m. on February 13, 2020, pursuant to Iowa Code Section 69.2. The Madison County Auditor, Treasurer, and Recorder, hereafter referred to as "Hearing Board" held a due process hearing where both the Petitioners and Mr. Price presented evidence. The Hearing Board had discussions in the public and then voted unanimously to deny the Petition.

To begin the public hearing the Hearing Board designated the County Auditor as Board Chair and Sarah Pugh as Board Clerk. The Hearing Board then adopted Rules and Procedures for the public hearing designating forty-five (45) minutes for each side to present evidence. After the adoption of the Rules and Procedures the Petitioners went first in presenting their evidence. Attorney Fred Dorr represented the Petitioners and began by providing an affidavit to the Hearing Board which contained the Petitioners' evidence alleging that Aaron Price was no longer a resident of Madison County, Iowa. Mr. Dorr did not call any witnesses but presented his evidence through his affidavit and oral argument.

Mr. Dorr's affidavit provided evidence that on or about October 2, 2019, that Aaron Price and his wife purchased a property in Washington County, Utah, that the Petitioner alleges is Mr. Price's primary residence. The Petitioners also stated that on or about February 26, 2019, Mr. Price and his wife purchased an investment property in Saint George, Utah. Mr. Dorr also provided in his affidavit that Mr. Price and his wife sold two (2) different properties in Madison County, Iowa on or about April 24, 2017 and April 19, 2019 and that Mr. Price no longer owns real property in the State of Iowa. Mr. Dorr also attached Washington County, Utah land records from their Assessor's website that indicate that Mr. Price's home located in Washington County, Utah as his "Primary" residence which is necessary for him to receive a 45% exemption/reduction against his property taxes at the Washington, Utah home. Mr. Dorr claims that this shows that "Aaron Price has now been declared to Utah authorities as a Utah resident with his 'primary' home being located in... Washington, Utah."

In addition to Mr. Dorr's assertion that Mr. Price owns two (2) homes in Utah and owns no real property in Madison County, Iowa, Mr. Dorr presented evidence that Mr. Price called into seven (7) meetings to participate by phone, was absent three (3) times, and left early one (1) time between April 23, 2019 and December 31, 2019. Mr. Dorr argued that the Madison County Board of Supervisors violated Iowa Code Section 21.8, asserting that Mr. Price's telephonic participation was an electronic meeting. In reference to same, Mr. Dorr stated that Mr. Price was absent thirty-three (33) percent of the time if Mr. Price's absences and his participation by phone were added together. He further argues that Mr. Price participated remotely because "[i]t can only be reasonably assumed that he did so to avoid traveling back to Iowa from his Utah residence to participate in person at supervisor meetings."

Mr. Dorr indicated to the Hearing Board that the legal standards provided to the Board by the Madison County Attorney was not the correct legal standards for reviewing residency and that the Hearing Board should only look at Iowa Code Section 69.2. Mr. Dorr concluded his affidavit and argument by asking the Hearing Board to determine that pursuant to Iowa Code Section 69.2(1)(c), that Mr. Price's residency to be Washington, Utah, beginning October 2, 2019, and that a vacancy exists for the Board of Supervisor seat held by Aaron Price.

When the Petitioners completed their presentation of evidence, Aaron Price addressed the Hearing Board and presented argument and evidence through exhibits and testimony. Mr. Price did not call any witnesses except testify on his own behalf. Mr. Price acknowledged that he had sold his real property located in Madison County, Iowa, and did in fact purchase two (2) homes in Washington, Utah and St. George, Utah. Mr. Price testified that although he purchased real property in Utah he did not give up his residency in Madison County, Iowa. He also testified that he never declared his home in Washington, Utah as his primary residence and that he had received notice from the Washington County, Utah, Assessor that the Assessor had not received a completed application for a Residential Exemption for his Washington, Utah, home and that the Residential Exemption had been removed for the upcoming tax year. This notice was sent on January 13, 2020.

Mr. Price testified that he lives in Van Meter, Madison County, Iowa. He provided evidence of residency to the Hearing Board with copies of electric bills, trash bills, water bills, his voter registration card and voter profile, his driver's license and vehicle registration, a rental agreement affidavit from Tray and Tamara Thomas and returned checks showing payments, dish network bills, Wells Fargo Bank contact information records, medical records, dental records, part of a storage lease agreement, church donations, affidavit of residency, and a notice of public hearing, all containing his address for his declared residency in Van Meter, Madison County, Iowa.

Mr. Price testified that his mother-in-law suffers from dementia and that her health is declining and that she lives in Utah. He testified that his wife is living in Utah taking care of his mother-in-law. He testified that at times he has called into meetings and participated by phone but that those meetings were short meetings mostly lasting for five minutes or less and were ministerial in nature. Mr. Price provided an exhibit to the Hearing Board entitled "Meeting Attendance" where he addressed his meetings attended by phone, in person, and his absences. It showed that from January 2019 to present he attended nearly eighty (80) percent of the meetings in person and that out of sixty-seven (67) meetings, he participated by conference call nine (9) times. This he stated made his overall attendance more than ninety-two (92) percent. In addition, Mr. Price identified the reasons for which he had to participate telephonically, including attending his son's college graduation and wedding, attending his daughter's college orientation, and spending the weeks of Halloween, Thanksgiving, and Christmas with his family.

Mr. Price also testified about his reasons for being absent. He testified that for a couple of the meetings he had personal conflicts with personal appointments he had in Des Moines and West Des Moines. Mr. Price testified that one (1) meeting he did not think it was necessary for him to attend since it was an informational meeting with an architect regarding plans for the ambulance project and that the other Supervisors were spearheading that project. Finally Mr. Price testified that he was unable to attend two (2) meetings because he was called to jury duty and served on the jury of a Madison County criminal trial.

During his presentation of evidence, Mr. Price addressed the Petitioner’s assertion that Iowa Code Section 21.8 applies to Mr. Price’s participation by phone. Mr. Price argued that all of the meetings of the Board of Supervisors were “in person” meetings and not electronic meetings. That his participation telephonically did not create an electronic meeting. Mr. Price argued that Iowa Code Section 21.8 did not apply and was essentially irrelevant. Mr. Price provided the Hearing Board copies of Iowa Code Sections 69.2, 331.201, 48A.5, 48A.5A, Iowa Administrative Code Chapter 701—38.17, and Iowa Code Chapter 21. Mr. Price asked the Hearing Board to determine that he is a resident of Madison County, Iowa and to deny the Petition.

II. LEGAL PRINCIPLES

Prior to the public hearing, the Madison County Attorney provided to the Hearing Board, Mr. Dorr, and Mr. Price the following legal opinion which is hereby adopted as the legal principles by the Hearing Board as set forth below in italics:

The petitioners have alleged that the seat is vacant pursuant to Iowa Code Section 69.2(1)(c), that “[t]he incumbent ceasing to be a resident of the state, district, county, township, city, or ward by or for which the incumbent was elected...”

Recently the Supreme Court of Iowa made clear the standard for someone to seek public office, this is the same standard to hold public office after being elected.

The laws of this state provide that a person who seeks public office must be an “eligible elector.” Iowa Code § 39.26. An “eligible elector” under our law is a person who possesses the qualifications to be a registered voter. Id. § 39.3(6). The qualifications to vote have roots in our Iowa Constitution and address concepts of citizenship, age, and residency. See Iowa Const. art. II, § 1. In short, a person who runs for public office in Iowa must be a person who can vote in Iowa. Thus, restrictions on those who run for office are actually restrictions on those who can vote. Chiodo v. Section 43.24 Panel, 846 N.W.2d 845, 848 (Iowa 2014).

Iowa Code Section 48A.5(2)(b) states that “to be qualified to register to vote, an eligible elector shall be an Iowa resident. A person’s residence, for voting purposes only, is the place which the person declares is the person’s home with the intent to remain there permanently or for a definite, or indefinite or indeterminable length of time.”

So the primary question in this case is whether or not Aaron Price is a resident of Madison County, Iowa, pursuant to the qualifications to be a registered voter? This is stated in Iowa Code Section 48A.5A – Determination of residence. It states:

Residence shall be determined in accordance with the following principles:

- 1. The residence of a person is in the precinct where the person's home or dwelling is located.*
- 2. A residence for purposes of this chapter cannot be established in a commercial or industrial building that is not normally used for residential purposes unless the building is used as a primary nighttime residence.*

3. A person does not lose residence if the person leaves the person's home to reside temporarily in another state or precinct.

4. If a person goes to another state or precinct and files an affidavit of residence in that state or precinct for election purposes, the person loses residence in the former state or precinct, unless the person moved to the other state after that state's deadline for registering to vote in a particular election.

5. A student who resides at or near the school the student attends, but who is also able to claim a residence at another location under the provisions of this section, may choose either location as the student's residence for voter registration and voting purposes.

6. If an active member of the United States armed forces, as defined by section 53.37, has previously resided at a location that meets the requirements of this section, that person may claim either that previous residence or the person's current residence as the person's residence for voter registration and voting purposes.

7. Notwithstanding subsections 1 through 6, the residence of a homeless person is in the precinct where the homeless person usually sleeps. Residence requirements shall be construed liberally to provide homeless persons with the opportunity to register to vote and to vote.

8. A person's declaration of residency for voter registration and voting purposes is presumed to be valid unless a preponderance of evidence indicates that another location should be considered the person's voting residence under the provisions of this chapter.

Iowa Code Section 48A.5A identifies a person's residence as what the voter claims as their "home or dwelling." This is a very broad standard. It even allows for a registered voter to temporarily reside in another state or precinct. See 48A.5A(3). Having said that, Iowa Code Section 69.2(1)(g) requires a member of the Board of Supervisors to not be physically absent from the County for sixty (60) consecutive days.

The code does identify a single event that would automatically cancel a voter's registration. If the voter registers to vote in another state or county then their voter registration should be cancelled in their Iowa precinct. See Iowa Code Section 48A.5A(4). If evidence is presented that Aaron Price registered to vote in another state or county, then the Hearing Board must vacate his seat. See *Id.*

The Iowa Secretary of State maintains an Iowa Election Administrator's Handbook to help County Auditors in fulfilling their election duties. The handbook defines residency for voter registration as follows:

Generally, a voter's residence for voter registration purposes is where the voter claims it to be, as long as the voter does not claim any other residence for voter registration. A voter's residence is the voter's home or dwelling (whatever place the voter considers to be "home"). A business or any other non-residential property cannot be used as a residential address for voter registration unless that place is truly a primary, nighttime residence for that registrant.

There is no restriction on how long one has to live somewhere before it can become a residence for voting purposes in Iowa. Residency is not lost by going to another state or

precinct temporarily. If a person moves to another state and missed the voter registration deadline in that state for a particular election, the person may continue to be registered in Iowa for that election.

This instruction matches the law as set forth in Iowa Code Sections 48A.5 and 48A.5A.

It is instructive when determining residency to look at Election Day Registration found in Iowa Code Section 48A.7A. Election Day Registration requires a voter who wants to register to vote on election-day to prove identification and prove residency. In order to prove residency on election-day, a voter must show photographic identification containing the person's current address in the voting precinct, or if the photographic identification does not have the current address, the voter may present one of the following documents that shows the person's name and current address in the precinct, within forty-five (45) days prior to presentation:

- a) Residential lease.*
- b) Property Tax Statement.*
- c) Utility Bill.*
- d) Bank Statement.*
- e) Paycheck.*
- f) Government Check.*
- g) Other Government Document*

If an individual can present a photo ID with their current address or one of the above listed forms of identification, then the precinct worker must allow the person to vote because they have been determined to have met the residency requirement.

The Iowa Secretary of State's Iowa Election Administrator's Handbook makes the following statement for "Proof of Residency":

If the ID presented as proof of identity does not contain the person's current address, any of the following may be presented as proof of residency as long as it contains the voter's name and current address:

- Residential lease,*
- Property tax statement,*
- Utility Bill (including a cell phone bill)*
- Bank statement,*
- Paycheck,*
- Government check, or*
- Other government document (vehicle registration, tax assessment, etc.)*

Precinct Election Officials must inspect the proof of residence document to verify it shows the voter's name and address. Documents presented must be actual documents, not documents displayed on smart phones or other technological devices.

After a person has registered to vote, the County Auditor is required within twenty-one (21) days to send an acknowledgment to the registrant to the mailing address shown on the voter registration form. The acknowledgment must be sent by nonforwardable mail. See Iowa Code Section 48A.26A.

The standard for review by the Hearing Board is a preponderance of the evidence. Iowa Code Section 48A.5A states “[a] person's declaration of residency for voter registration and voting purposes is presumed to be valid unless a preponderance of evidence indicates that another location should be considered the person's voting residence under the provisions of this chapter.”

Iowa Civil Jury Instructions define Preponderance of the evidence as “evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.” See Iowa Civil Jury Instruction 100.3 Burden of Proof, Preponderance Of Evidence.

If a preponderance of the evidence shows that Aaron Price has registered to vote in another state or county; or that another location, other than Madison County, Iowa, should be considered Aaron Price's voting residence under the provisions of Iowa Code Chapter 48A, the Hearing Board must vacate his seat as Madison County Supervisor.

There is a presumption that Aaron Price's declaration of residency is valid, and as a voter Mr. Price can declare where his home is “with the intent to remain there permanently or for a definite, or indefinite or indeterminable length of time.” See Iowa Code Section 48A.5A(8); See Also Iowa Code Section 48A.5(2)(b).

The Hearing Board can look at the requirements of Iowa Code Section 48A.7A, Election Day Voter Registration, to help determine what type of evidence is considered for showing residence for voter registration purposes. If Mr. Price can prove by a preponderance of the evidence that he is an eligible elector, or in other words, that he would be able to register to vote in Madison County, Iowa, then the Hearing Board should dismiss the petition.

III. CONCLUSIONS OF LAW

Petitioners have asked this Hearing Board in their oral argument to confine our analysis to Iowa Code Section 69.2 when dealing with residency. This is inconsistent with those arguments made by the Petitioner in their Petition and in the affidavit submitted by Mr. Dorr in support of their Petition to Vacate. Mr. Dorr in his Petition and affidavit not only references Iowa Code Section 69.2, but he also cites to Iowa Code Sections 331.201(2), 48A.5(2)(b), 48A.5A(1), 48A(8).

There is no question that in order for Aaron Price to serve as Madison County Supervisor he must be a qualified voter. See Iowa Code Section 331.201. See Also Chiodo v. Section 43.24 Panel, 846 N.W.2d 845, 848 (Iowa 2014). Iowa Code Section 69.2(1)(c) states that the Board of Supervisor seat shall be vacant if the incumbent ceases to be a resident of the state or county. Iowa Code Section 69.2 does not define residency. It does define physical presence by giving the power to the Board of Supervisors to declare a vacancy in an elected county office upon the finding that the county officer has been physically absent from the county for sixty (60) consecutive days, with some exceptions. See Iowa Code Section 69.2(1)(g). In this case Aaron Price provided evidence that he was never absent more than nineteen (19) consecutive days, and regardless, we find that this subsection does not apply to the definition of residency.

Since Iowa Code Section 69.2 is silent as to the definition of residency, we must look to Iowa Code Chapter 48 when analyzing the question of residency to determine if Aaron Price is a qualified registered voter. See Iowa Code Section 331.201. We first look to the relevant sections in Iowa Code Section 48A.5A.

Subsection one (1) states, “[t]he residence of a person is in the precinct where the person’s home or dwelling is located.”

Subsection three (3) states that “[a] person does not lose residence if the person leaves the person’s home to reside temporarily in another state or precinct.”

Subsection four (4) states “[i]f a person goes to another state or precinct and files an affidavit of residence in that state or precinct for election purposes, the person loses residence in the former state or precinct, unless the person moved to the other state after that state’s deadline for registering to vote in a particular election.”

Subsection eight (8) states “[a] person’s declaration of residency for voter registration and voting purposes is presumed to be valid unless a preponderance of evidence indicates that another location should be considered the person’s voting residence under the provisions of this chapter.”

When analyzing the question of determining Aaron Price’s residency Iowa Code Section 48A.5A(8) sets the legal standard for our analysis. It identifies the evidentiary standard as a preponderance of evidence and references not just that subsection but the provisions of the entire chapter (Iowa Code Chapter 48A). This also includes Iowa Code Section 48A.7A, the statute for election-day voter registration.

After reviewing the evidence presented by the Petitioners there is no question that Aaron Price is not a real property owner in Madison County, Iowa. We reject the Petitioners’ assertion that an individual must be a property owner to serve as an elected official in Madison County. Even Iowa Code Section 48A.5A(7) allows a homeless person to register to vote in the precinct where the homeless person usually sleeps. In fact, under the statute, the only dispositive fact by itself that would cause a registered voter to lose their residency would be if that individual filed an affidavit of residence in another state or another county for election purposes. See Iowa Code Section 48A.5A(4). No evidence was provided by the Petitioners that Aaron Price registered to vote in Utah or filed an affidavit of residency for voting purposes in Utah or a precinct outside of Madison County, Iowa.

The closest argument made by the Petitioners’ is they allege that Mr. Price had declared his residence in Utah as his primary residence. They argued that the Washington County, Utah Assessor’s website had Mr. Price’s address designated as primary. Mr. Price offered rebuttal evidence to the contrary. He testified that he never sought an application in Utah for the equivalent of Iowa’s homestead tax credit and that the Washington County, Utah Assessor sent him notice that his house was being assessed as a Non-Primary residence without the benefit of the forty-five (45) percent residential exemption. We note that a declaration of residency for property taxes does not by itself create a right to vote in Iowa. A voter must also make a separate declaration of residency for voter registration and voter purposes. See Iowa Code Section 48A.5(8). Regardless, we do not find that the Petitioners’ proved by a preponderance of the evidence that Mr. Price declared any of his properties in Utah as his primary residence for tax or for voting purposes.

The Petitioners offered evidence that Mr. Price missed meetings and participated telephonically in other meetings. The Petitioners assumed that the only reason would be because Mr. Price was in the State of Utah with his family. Mr. Price offered rebuttal evidence and testimony that his wife was indeed in Utah caring for her mother who is suffering from dementia and other health problems. He acknowledged that at times he was in Utah with his family at holidays or other occasions, but that he was

also attending his son's wedding, college graduation, and daughter's college orientation. Mr. Price also testified and provided evidence that he was absent from two (2) meetings because he was called to jury duty in Madison County and served on the jury in a criminal case. Iowa Code Section 48A.5A(3) clearly states that "[a] person does not lose residence if the person leaves the person's home to reside temporarily in another state or precinct."

In his presentation of evidence Mr. Price offered evidence that he had a lease agreement and was making payments for his lease to Tray and Tamara Thomas for his rental home in Van Meter, Madison County, Iowa. Mr. Price provided extensive documentation of utility bills, bank records, medical records, dental records, and government records showing his address as the same home he is leasing in Van Meter, Madison County, Iowa. All of these documents are evidence of where Mr. Price's residence and dwelling place is located. In fact, all of these documents are identified in Iowa Code Section 48A.7A allowing a voter to prove residency in order to register and vote on election-day. We find that Mr. Price provided overwhelming evidence to the Hearing Board that he is a resident of Madison County and an eligible voter pursuant to Iowa Code Section 69.2 and Iowa Code Chapter 48A as set forth above. We further find that Mr. Price has designated the dwelling he is leasing from Tray and Tamara Thomas in Van Meter, Madison County, Iowa, as his dwelling and residence pursuant to Iowa Code Section 48A.5(2)(b).

IV. DISPOSITION AND ORDER

For the reasons set forth above we hold that the Petitioners failed to prove by a preponderance of the evidence that Aaron Price's seat is vacant pursuant to Iowa Code Section 69.2 and the provisions of Iowa Code Chapter 48A as set forth above, and we therefore, unanimously deny the petition to vacate the Madison County Board of Supervisor seat held by Aaron Price.

We further adopt as part of the record the Rules and Procedures; the minutes taken by Board Clerk Sarah Pugh; the audio recording; the affidavit of Fred Dorr with attached exhibits A through H; and separately those exhibits/attachments 1-38 submitted by Aaron Price.

This written order is hereby adopted on February 21, 2020 and shall be published immediately in the Madisonian as required by Iowa Code Section 69.2(2).



Madison County Auditor
Shelley Kaster



Madison County Treasurer
Jana Corkrean



Madison County Recorder
Lisa Smith