

February 15, 2022

Hello Sublette County, this is Albert Sommers reporting to you on February 15, the second day of the 2022 Budget Session. On January 22, the Secretary of State's Office received a complaint from the Wyoming Central Committee of the Republican Party regarding the residency of a member of the Wyoming House of Representatives. It alleges that Representative Dan Zwonitzer, District 43, does not reside in the district he was elected to represent, as the Wyoming Constitution requires. The Secretary of State sent this complaint to the Speaker of the Wyoming House, because the Secretary of State has no authority over the qualifications of a legislator to hold office. The Wyoming Constitution, Article 3, Section 10 provides that each chamber of the Wyoming legislature shall be the sole judge of the qualification of its members to serve in that chamber.

On Tuesday afternoon, Speaker Barlow scheduled time to debate motions on whether Representative Zwonitzer is qualified to remain a member of the Wyoming House of Representatives. The Central Committee complaint states, "The Wyoming Constitution Article 3 Section 2 requires that a legislator must reside in the District he or she represents." This representation of the Wyoming Constitution is inaccurate.

Article 3 Section 2 of the Wyoming Constitution states, "No person shall be a senator who has not attained the age of twenty-five years, or a representative who has not attained the age of twenty-one years, and who is not a citizen of the United States and of this state and who has not, for at least twelve months next preceding his election resided within the county or district in which he was elected." There is no Constitutional provision that requires a legislator to reside in his district after the legislator is elected. These qualifications are paramount, because the Wyoming Constitution does not give the legislature the authority to create additional qualifications.

However, that is exactly what the Legislature did in 2003 when it enacted additional qualifications with the passage of Wyoming Statute 22-18-101. In fact, W.S. 22-18-101(f) states, "In addition to subsections (a) through (c) of this section, a vacancy shall occur in the office of a

member of the state legislature when the person fails to reside in the legislative district from which he is elected.”

Clear as mud, right? When in doubt, a legislative body must follow its state constitution first, its rules second, its customs/precedent third, and then statutory provisions. The only precedent which binds the House are the requirements of the US and Wyoming constitutions. The Wyoming Constitution clearly does not require a member of the House to continue to reside in his district after the election. The Wyoming Supreme Court ruled that a statute cannot add qualifications for a constitutional office. In a term limits case, the Court stated, “[t]he question is simply whether it was the framers' intent to allow the legislature to add qualifications to those established in the constitution. In reading the pertinent provisions *in pari materia*, and in light of the general spirit of the instrument, we have concluded there was no such intent.”

The Wyoming Supreme Court has adopted the view that statutory and constitutional provisions which tend to limit the candidacy of any person from public office must be construed in favor of the right of the voters to exercise their choice and should be construed strictly and not extended to cases not clearly covered.

A motion was brought today to create a special committee to investigate the allegations against Representative Zwonitzer. Representative Zwonitzer stated that he leases a residence within his district, but owns a house outside his district. Zwonitzer stated he splits time between his two dwellings, and believes that he is satisfying the conditions of his office.

I voted against the motion to form an investigative committee. In my opinion, the Wyoming Constitution is clear that Representative Zwonitzer’s qualifications for office are being upheld, and that his current ownership of a home outside his district does not disqualify him from continuing as a House member for District 43. I do not believe in taking away the vote of the people, and if Mr. Zwonitzer runs for office again, then those voters will judge him.

I can be reached at albert@albertsommers.com with questions or comments.