ATTACHMENT 1

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

XAVIER BECERRA
Attorney General

OPINION	:	No. 18-302
of	:	July 20, 2018
XAVIER BECERRA Attorney General	:	
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Proposed relator ART PERRY has requested leave to sue proposed defendant ALLAN MANSOOR in quo warranto to oust Mansoor from the public office of Costa Mesa city councilmember on the ground that Mansoor did not reside in Costa Mesa for several months during his term.

CONCLUSION

Proposed relator does not raise a substantial question of law or fact that warrants initiating a judicial proceeding, and allowing the proposed quo warranto action to proceed would not serve the public interest. Proposed relator's application for leave to sue in quo warranto is therefore DENIED.

ANALYSIS

A quo warranto action is used to challenge whether a person is lawfully holding a public office.[1] The process is authorized by Code of Civil Procedure section 803, which provides: "An action may be brought by the attorney-general, in the name of the people of this state, upon his own information, or upon a complaint of a private party, against any person who usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military, or any franchise, or against any corporation, either de jure or de facto, which usurps, intrudes into, or unlawfully holds or exercises any franchise, within this state."[2]

Where the quo warranto action is initiated "upon a complaint of a private party,"[3] the Attorney General acts as a gatekeeper; the party must obtain the Attorney General's permission before filing an action in superior court.[4] In evaluating whether to grant leave to sue, we do not endeavor to resolve the merits of the controversy, but rather "decide whether the application presents substantial issues of fact or law that warrant judicial resolution, and whether granting the application will serve the public interest."[5]

Proposed defendant Mansoor was elected in 2016[6] to serve a four-year term on the Costa Mesa City Council. Proposed relator Perry contends that Mansoor automatically vacated this city council seat by living outside of Costa Mesa for several months in 2017. For the reasons that follow, we disagree, and therefore deny Perry's application to proceed against Mansoor in quo warranto.

Costa Mesa is a general law city with a city manager form of government.[7] At the time of Mansoor's election, city councilmembers were elected at-large.[8] The Government

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[1] *Nicolopulos v. City of Lawndale* (2001) 91 Cal.App.4th 1221, 1225; 76 Ops.Cal.Atty.Gen. 157, 165 (1993) (quo warranto is the "appropriate remedy to test the right of a person to hold public office").

[2] Code Civ. Proc., § 803.

[3] Code Civ. Proc., § 803.

[4] *Nicolopulos v. City of Lawndale*, *supra*, 91 Cal.App.4th at pp. 1228-1229.

[5] 95 Ops.Cal.Atty.Gen. 50, 51 (2012).

[6] Mansoor was first elected to the Costa Mesa City Council in 2002, and again in 2006. He was elected to the California State Assembly in 2010 and 2012. (https://www.costamesaca.gov/index.aspx?page=911, as of May 24, 2018.)

[7] See Gov. Code, § 34851 (authorizing city manager form of government).

[8] Beginning with the November 2018 election, Costa Mesa will transition to by-district

Code requires city councilmembers to maintain residence in the city they serve for the duration of their term.[9]

Two provisions of the Government Code[10] are particularly relevant here. Section 36502 states: "If, during the term of office, [a councilmember] moves his or her place of residence outside of the city limits . . ., his or her office shall immediately become vacant."[11] Similarly, section 1770, which describes events causing vacancies in public offices before the expiration of a term, provides that "[a]n office becomes vacant" if a councilmember "ceas[es] to be an inhabitant of the state, or if the office be local and one for which local residence is required by law, of the district, county, or city for which the officer was chosen or appointed, or within which the duties of his or her office are required to be discharged."[12] Thus, the question before us is whether Perry has presented a substantial question of law or fact as to whether Mansoor vacated his office by failing to reside in Costa Mesa.

The residence of a public official in this context is his or her *legal* residence, also referred to as "domicile."[13] Section 244 of the Government Code guides the determination of a person's domicile:[14]

> In determining the place of residence the following rules shall be observed:
>
> (a) It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he or she returns in seasons of repose.
>
> (b) There can only be one residence.
>
> (c) A residence cannot be lost until another is gained.

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elections for its city council. (https://www.costamesaca.gov/index.aspx?page=2121, as of May 24, 2018.)

[9] Gov. Code, § 36502, subd. (a); see also Gov. Code, § 1770, subd (e).

[10] Future undesignated code references are to the Government Code.

[11] Gov. Code, § 36502, subd. (a).

[12] Gov. Code, § 1770, subd. (e).

[13] 72 Ops.Cal.Atty.Gen. 8, 11 (1989).

[14] *Smith v. Smith* (1955) 45 Cal.2d 235, 239 (sections 243 and 244 give "the basic rules generally regarded as applicable to domicile").

. . .

(f) The residence can be changed only by the union of act and intent.

. . .

The determination of domicile is a mixed question of fact and law[15] that may involve various factors, including acts and declarations by the official, as well as the official's mailing address, voter registration, car registration, and tax returns.[16] But the critical element is intent.[17] As we have recently observed, "Because a determination of domicile is based not only on physical conduct, but also intent, the requirement that a substantial showing be made before we authorize judicial resolution is particularly pertinent."[18] The burden of proving a change of domicile is on the party asserting it,[19] here proposed relator Perry.

Perry alleges that Mansoor was domiciled outside of Costa Mesa in a home on Pegasus Street in Newport Beach, apparently owned by Mansoor's in-laws, for several months in 2017. Perry presents declarations of neighbors and other individuals who observed Mansoor's and his wife's cars parked frequently at the Pegasus Street house during this period, including late nights and early mornings. People also observed Mansoor behaving as though he lived in this Pegasus Street house, by, for instance, entering the home without knocking, and giving fruit from one of its trees to a neighbor.

Mansoor, in turn, does not deny that he lived in the house on Pegasus Street for some time in 2017, but does deny that he ever changed his domicile from Costa Mesa. He provides a sworn declaration explaining that until June 2017, he and his family lived at 433 Enclave Circle, Apartment 106, in Costa Mesa. Voter registration forms filed in September 2016 for both Mansoor and his wife reflect that address. Several months before their lease for the Enclave Circle apartment was due to expire in June 2017, Mansoor and his wife began working with a realtor to locate an apartment more suitable for their family—which now included three children—in Costa Mesa. Mansoor provides an email from his realtor

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[15] *Fenton v. Board of Directors* (1984) 156 Cal.App.3d 1107, 1117.

[16] See, e.g., 99 Ops.Cal.Atty.Gen. 74, 76–77 (2016); 85 Ops.Cal.Atty.Gen. 90, 93 (2002); 72 Ops.Cal.Atty.Gen. 15, 22 (1989).

[17] 72 Ops.Cal.Atty.Gen., *supra*, at p. 14.

[18] 101 Ops.Cal.Atty.Gen. __ (2018), citing 87 Ops.Cal.Atty.Gen. 30, 31 (2004).

[19] 85 Ops.Cal.Atty.Gen., *supra*, at p. 93, citing *DeMiglio v. Mashore* (1992) 4 Cal.App.4th 1260, 1268.

dated April 12, 2017, showing that she had established an automated search for them, and an example of the results of that searching system. They also searched real estate web sites and drove around the city in an attempt to locate an apartment. Mansoor states that he and his wife visited "many properties" in Costa Mesa between April and June 2017, and that every one of them had a waiting list. They submitted applications for "a few properties" where the waiting list was short enough that they hoped they might have a chance of securing a lease, but others had lists so long it would have been futile to apply.

Mansoor declares that despite their efforts, they were not able to secure a new lease before their June 2017 departure date because of the extremely competitive rental market in Costa Mesa. Around August 1, 2017, Mansoor and his wife noticed a for-rent sign at 2205 Canyon Drive in Costa Mesa, while they were driving to view an advertised rental. They arranged to see the property as quickly as possible, and secured the lease. Mansoor states that he believes they only got the Canyon Drive lease because they were the first ones to view the property, and submitted an application and deposit as soon as they had seen it. The Canyon Drive apartment needed extensive remodeling before Mansoor and his family were able to move in. They were able to move in on October 17, 2017, at which point Mansoor updated his voter registration to reflect the Canyon Drive address.

Mansoor declares that during the period between living in the Enclave Circle and Canyon Drive apartments, his intent was always to live in Costa Mesa, and that his residence has always been Costa Mesa. He further explains that his attachment to Costa Mesa is such that in 2012, he "gave up what was probably an easy reelection to the State Assembly because [he] was unwilling to leave Costa Mesa," opting to face a better-funded opponent and a more challenging campaign.[20]

Mindful that a change of domicile requires a union of act and intent,[21] and considering the evidence before us, we do not believe that proposed relator Perry has shown a substantial issue of fact regarding Mansoor's residence warranting the initiation of a quo warranto action. The facts regarding where Mansoor was living between the time he left the Enclave Circle apartment and the time he moved into the Canyon Drive apartment do not appear to be in dispute. Rather, the dispute is whether Mansoor changed his domicile to Newport Beach in the months between living at Enclave Circle and Canyon Drive.

[20] Mansoor nevertheless won reelection to the Assembly in 2012, representing the district now containing Costa Mesa.

[21] Gov. Code, § 244, subd. (f).

"[T]he acquisition of a new domicile is generally understood to require an actual change of residence accompanied by the intention to remain either permanently or for an indefinite time in the new locality."[22] Although Perry speculates that it would have been logical for Mansoor and his family to remain, perhaps rent-free, in the larger Newport Beach house, he presents no evidence that Mansoor intended to remain in Newport Beach either permanently or indefinitely.

On the other hand, Mansoor has declared, under penalty of perjury, his intent at all times to remain a resident of Costa Mesa. Moreover, that intent is supported by Mansoor's conduct in searching for apartments, employing a realtor, and signing a lease on an apartment that had yet to undergo substantial renovation.[23] Perry maintains that Mansoor's intent to stay in Newport Beach until he found a suitable Costa Mesa home amounts to an intent to stay in Newport Beach indefinitely. We do not believe that the approximate two-month period[24] between the expiration of Mansoor's Enclave Circle lease and his acquisition of the Canyon Drive lease, coupled with his efforts during those months to obtain a Costa Mesa home, produce a substantial issue of fact that he had an intent to remain in Newport Beach indefinitely. Given the evidence before us, we do not believe that temporarily staying with relatives for a few months while making efforts to secure permanent housing is sufficient to effect a change in domicile.

The California Supreme Court reached a similar conclusion in considering, for voting purposes, the domicile of college students who had departed the previous academic year with no intention of returning to their campus housing and were currently living in expressly temporary settings, such as friends' apartments, tents, and cars.[25] The Elections Code provides that a person's domicile for voting purposes is the place where "habitation is fixed, wherein the person has intention of remaining, and to which, whenever he or she is absent, the person has the intention of returning. At a given time, a person may have only one domicile."[26] Construing the Elections Code together with section 244, the Court concluded that the students were domiciled for voting purposes at their prior campus addresses; they had to be domiciled somewhere to avoid disenfranchisement, and their temporary addresses did not qualify as domiciles because the students did not intend to

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[22] 85 Ops.Cal.Atty.Gen., *supra*, at p. 93.

[23] 85 Ops.Cal.Atty.Gen., *supra*, at p. 93 (most important evidence of intent is conduct).

[24] The record is not clear as to when in June Mansoor's Enclave Circle lease expired.

[25] *Walters v. Weed* (1988) 45 Cal.3d 1, 7.

[26] Elec. Code, § 349. At the time of the *Walters v. Weed* decision, identical language was contained in Elections Code section 200. (See *Walters v. Weed*, *supra*, 45 Cal.3d at p. 6.)

remain there.[27]

The same considerations are relevant here; Mansoor must have a domicile,[28] he cannot lose his Enclave Circle domicile until another is acquired, and there is no evidence he intended to remain in Newport Beach any longer than it took to acquire a new Costa Mesa domicile.

Perry urges that our granting of leave to sue in quo warranto in 30 Ops.Cal.Atty.Gen. 6 (1957) compels that we grant leave to sue here, but we disagree. In that earlier opinion, Wallace Pond, a city councilmember of Fremont, married and moved from Fremont to a home owned by his mother-in-law, just outside Fremont's limits, in June 1956. Pond maintained a business in Fremont and used that as his mailing address. He provided an affidavit, signed on April 5, 1957, attesting that he did not intend for his mother-in-law's house to be a permanent home; rather, it was temporary, while he and his wife searched for a suitable home to buy in Fremont. In May 1957, Pond provided a further affidavit indicating that he had acquired an apartment in Fremont, and would be living there as of July 1, 1957.[29]

While Mansoor and Pond may appear similarly situated in some respects, when we balance the various factors we must take into consideration in evaluating an alleged change of domicile, we conclude that a different outcome is warranted here. First, we find it relevant that when Pond's residency was challenged, he had already lived outside of Fremont for nearly a year. Mansoor, by contrast, had obtained and moved into new housing in Costa Mesa by the time his residency was challenged. Additionally, in the Pond matter, the proposed relator provided an affidavit from a person stating that Pond had, on April 5, 1957, told that person that he "had no intention of returning to live within the City of Fremont 'for at least within the year.'"[30] In other words, the proposed relator in the Pond matter provided sworn testimony challenging Pond's intent regarding domicile. Here, there is no evidence contradicting Mansoor's stated intent to remain domiciled in Costa Mesa.[31] To the contrary, both Mansoor's actions and his words provide factual support for his claim that he had, at all times, an intent to maintain his domicile in Costa Mesa.

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[27] *Walters v. Weed*, *supra*, 45 Cal.3d at pp. 11-12.

[28] Gov. Code, § 243.

[29] 30 Ops.Cal.Atty.Gen., *supra*, at pp. 7-8.

[30] 30 Ops.Cal.Atty.Gen., *supra*, at p. 8.

[31] See 8 Ops.Cal.Atty.Gen. 221, 223 (1946) (unverified statement of facts not persuasive against direct evidence produced by proposed defendant, leave to sue denied).

Thus, while we give weight to the fact that Mansoor, like Pond, spent some amount of time housed at a location outside the relevant city limits while serving as a councilmember, we balance that circumstance against the evidence of Mansoor's efforts to secure replacement housing in Costa Mesa, and the absence of evidence indicating Mansoor's intent to relocate elsewhere. Perry's contention that intent is inherently a question of fact that requires judicial resolution ignores his burden to raise a *substantial* issue of fact regarding Mansoor's purported change of domicile[32] and our broad discretion in evaluating quo warranto matters.[33]

Moreover, viewing the case in its full context, we do not believe that allowing a quo warranto action to proceed in this matter would serve the public interest. Although some may debate the notion that one's domicile in a particular jurisdiction can continue despite one's (temporary) abandonment of an address within that jurisdiction, to conclude that a quo warranto action is *mandated* under the present circumstances would elevate form over substance, and we decline to exercise our discretion in that way.[34] Mansoor lacked an identifiable address in Costa Mesa for only a few months, he acquired an intended address in Costa Mesa seven months before Perry submitted this quo warranto application, and he actually resided at the new Costa Mesa address for over four months by the time the application was submitted. When we consider these facts together with Mansoor's long-standing relationship to Costa Mesa and the complete lack of evidence that Mansoor ever intended to be domiciled anywhere else, we find no reasonable basis to doubt Mansoor's connection to Costa Mesa, and we do not believe that the spirit of the statutes requiring residency for city councilmembers would be served by allowing the proposed quo warranto action to proceed.

In sum, we find that Perry has not met his burden of demonstrating a substantial issue of fact or law[35] requiring judicial resolution, and further conclude that allowing a quo

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[32] 85 Ops.Cal.Atty.Gen., *supra*, at p. 93.

[33] *Rando v. Harris* (2014) 228 Cal.App.4th 868, 878-882 (presence of debatable issue does not require granting of quo warranto, much less demonstrate an "extreme and indefensible abuse of discretion" in denying application); 96 Ops.Cal.Atty.Gen. 48, 49 (2013); see also *City of Campbell v. Mosk* (1961) 197 Cal.App.2d 640, 650 ("The crystallization of an issue thus does not preclude an exercise of his discretion; it causes it").

[34] See 96 Ops.Cal.Atty.Gen., *supra*, at p. 53 (existence of "debatable" issue does not require judicial resolution through quo warranto where authorizing such a suit would not serve public interest).

[35] Perry contends that there is a substantial issue of law here because "no known case has required that Section 244 apply to Section 36502(a)." But we have consistently applied the rules of section 244 for determining domicile to the residency requirement of section

warranto action to proceed under the circumstances would not be in the public interest. Therefore, the application for leave to sue in quo warranto is DENIED.

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36502, subdivision (a) (see, e.g., 99 Ops.Cal.Atty.Gen., *supra*, at p. 76; 85 Ops.Cal.Atty.Gen., *supra*, at p. 92; 72 Ops.Cal.Atty.Gen. 63, 64 (1989)), and Perry offers no reason to question this approach.

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OFFICE OF THE ATTORNEY GENERAL
State of California

XAVIER BECERRA
Attorney General

OPINION	:	No. 18-1103
of	:	June 13, 2019
XAVIER BECERRA Attorney General	:	
LAWRENCE M. DANIELS Deputy Attorney General	:	

Proposed relator SCOTT LEAHY has requested leave to sue proposed defendant WALLACE T. MARTIN to remove him from the public office of member of the Ridgecrest City Council on the ground that proposed defendant MARTIN did not legally reside in the city at the time his nomination papers were issued, at the time of his election, and during his term of office.

CONCLUSION

Leave to sue is GRANTED to determine whether proposed defendant WALLACE T. MARTIN meets the legal residency requirements for holding the public office of council member of the City of Ridgecrest.

ANALYSIS

Introduction

Ridgecrest is a general law city in Kern County governed by a city council consisting of a mayor and four members who serve at large. Proposed defendant Wallace T. Martin (Defendant) was elected as a Ridgecrest city council member in November 2016. Proposed relator Scott Leahy (Relator), another candidate in the election, has submitted an application in quo warranto challenging Defendant's eligibility to serve as council member for failing to be a legal resident of Ridgecrest, as required by state law, and has offered evidence and argument why he should be allowed to sue in court to remove Defendant from the office he now holds. After carefully reviewing the parties' submissions, we conclude that a substantial question is presented regarding Defendant's legal residency and that it would be in the public interest to allow a quo warranto lawsuit to proceed.

Background

The following timeline reflects the parties' allegations about Defendant's legal residency:

- A copy of a grant deed submitted by Relator indicates that Defendant and his wife bought a property on Felspar Avenue, located in an unincorporated area of Kern County, just outside the City of Ridgecrest, on October 3, 2001. According to a copy of another grant deed submitted by Relator, Defendant and his wife made an interspousal transfer of this property to Defendant on September 22, 2016. A newspaper article dated April 7, 2017 reports that at a Ridgecrest City Council meeting, Defendant referred to this property as his "former home." In his sworn declaration dated November 19, 2018, Defendant refers to the property as "our [his and his wife's] property."

- According to Defendant's declaration, he entered into a rental agreement to lease a property on Lee Avenue in Ridgecrest on June 27, 2016, almost 15 years after he and his wife purchased the home on Felspar. Defendant further declares that the rental agreement took effect on July 1, 2016. According to a newspaper article submitted by Relator, Defendant reportedly stated at a candidate forum held on September 29, 2016, that he was leasing the property "from a friend on a temporary basis." Later, Defendant was reported to have stated at an April 7, 2017 city council meeting that he had rented the Ridgecrest property in order to "follow the letter of the law" to be eligible for city council.

- On August 2, 2016, as reflected in a copy of Defendant's nominating papers submitted by Relator, Defendant stated listing his residence as the Lee Avenue address.[1] Also on August 2, 2016, according to both Defendant's declaration and his reported statement at the candidate forum mentioned above, he registered to vote using the Lee Avenue address.

- On or about October 25, 2016, according to Defendant's declaration, Defendant completed a purchase of a duplex property on California Avenue in Ridgecrest. At the city council meeting held April 7, 2017, Defendant stated that he had done so as an "extra step" to establish legal residency in the city.

- On November 8, 2016, Defendant won election to the Ridgecrest City Council in the Kern County consolidated presidential general election.[2] Relator asserts that on December 7, 2016, Defendant was sworn into office.

- On January 17, 2017, Defendant declares, the tenant in one of his duplex units on California Avenue in Ridgecrest vacated the premises at Defendant's behest. Defendant further declares that sometime in April 2017, after completing substantial repairs, he moved into this unit. His declaration further states that on April 7, 2017, he changed his driver's license to reflect this address, and that on June 5, 2018, he changed his voter registration in kind.

In his application to sue in quo warranto, Relator states that Defendant "still lives" on Felspar Avenue outside Ridgecrest and does not live at either the Lee or California Avenue addresses in Ridgecrest. Relator attaches reports from a private investigator suggesting that Defendant lodged at the Felspar Avenue address from May 9 through 11, 2018, and from May 14 through 15, 2018. In his declaration, the investigator states that during these periods, Defendant went to his place of work in Ridgecrest in the morning, came home to the Felspar Avenue address after work, and stayed there in the evening.

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[1] These documents also indicate that on August 3, 2016, Defendant signed a pledge to conduct his campaign in accordance with the "Code of Fair Campaign Practices," and that on August 11, 2016, Defendant submitted his ballot designation worksheet. In response, Defendant does not specifically contest that he "received" his nomination papers on August 2, 2016, but rather states that he "pulled" his nominating papers on August 8, 2016. In any case, these small distinctions in terminology and timing do not affect our analysis.

[2] https://www.kernvote.com/ElectionInformation/Results?ID=88.

In the declaration he submitted in support of his opposition, Defendant states that he "stayed at" the Felspar Avenue address from May 9 through 11, 2018, and that he did so to care for his wife (as well as some animals on his property) because she needed treatment for a "medical condition." Defendant also states that he "once again stayed at" Felspar on the "evening" of May 14 and explains that this was to care for his animals while his wife traveled to UCLA for medical treatment. Defendant contends, however, that even assuming he has dual residences both inside and outside the Ridgecrest city limits, this "4-day snapshot out of 815 possible days" does not negate that his "domicile" was and is in Ridgecrest.

In reply, Relator submits additional evidence to show that contrary to Defendant's contention, it was not merely these dates that Defendant stayed at the Felspar Avenue address.[3] Relator contends that his evidence demonstrates that Defendant's "dual residence claims . . . are a sham attempt at establishing domicile in Ridgecrest city to make him eligible for city council." To support this assertion, Relator submits a sworn declaration from Lori Acton (another candidate in the Ridgecrest city council election), who states that from September 2017 through June 2018, she lived in a residence on California Avenue that had "an unobstructed view" of Defendant's duplex units, one of which Defendant states that he moved into in April 2017. Acton alleges that she had a "daily routine of checking for [Defendant] or his vehicles" at the duplex but that she never observed

[3] Defendant objects to the introduction of all the factual allegations in Relator's reply because they were not presented in Relator's application. However, much of Relator's reply evidence—the declarations involving service of the application materials and the amended statement of facts—could not have been argued in the original application. Moreover, at this state of the analysis, we are not conclusively adjudicating factual or legal issues, but simply determining whether to allow Relator to *initiate* a quo warranto action. In making this determination, we follow our own established procedures, which do not prohibit consideration of evidence submitted in a reply pleading in response to a showing made by the proposed defendant. (See California Attorney General, Quo Warranto, Resolution of Disputes—Right to Public Office (1990) p. 3 [quo warranto "is established solely as an action at law authorized by statute" and its application procedures "are contained in sections 803-811 of the Code of Civil Procedure and in sections 1 through 11 of the California Code of Regulations"]; Cal. Code Regs., tit. 11, § 4 [in a reply, the proposed relator may "reply to the showing thus made by the proposed defendant" in the opposition]; see also Code Civ. Proc., § 803 [Attorney General may initiate action "upon his own information" without "a complaint of a private party"]; Cal. Code Regs., tit. 11, § 10 [in certain cases of "urgent necessity," Attorney General may issue leave to sue to a proposed relator without allowing opposition from the proposed defendant].) In any event, as will be seen, we need not rely on the reply evidence to find substantial questions as to Defendant's legal residency at the time he was nominated and elected.

Defendant, his wife, or their cars there. Acton says that, between February and May 2018, she "would drive [her] boyfriend's sons to school each morning at 7:20 a.m." and "check" the "duplexes," and, likewise, did not see Defendant, his wife, or their vehicles there. Acton further swears that between May 2018 and October 2018, while driving to her father's residence (which she did with "considerable" frequency during this period "due to his declining health"), she passed by Defendant's duplex property each time, "specifically looked to determine" whether Defendant's or his wife's cars "were parked at that location," but "[a]t no time did [she] ever see" either of their cars parked there. On the other hand, when "occasionally" driving by the Felspar Avenue residence outside Ridgecrest, she "would observe" Defendant's and his wife's "vehicles parked in their driveway behind an electronic gate." Additionally, Acton declares that "[f]or over the past two years [she] has received telephone calls from multiple individuals who have attended dinner parties at the [Defendant and his wife's] county residence on Felspar."

Relator has also submitted declarations from two process servers—Peggy Partida and Kenneth Yule—in support of his claim that Defendant still legally resides at the Felspar Avenue property, not at any Ridgecrest address. The contents of these declarations are described below.

First, on October 27, 2018, at 8:32 a.m., Peggy Partida "personally served" Defendant at the Felspar Avenue address with the quo warranto application materials now under consideration. At the time of service, Partida declares, Defendant came to the door looking "as if he had just woken up" and wearing "sweats." Then, on October 29, 2018, at 7:25 a.m., according to an "affidavit of due diligence" (signed under penalty of perjury) attached to her declaration, Partida attempted to serve Defendant with an amended verified statement of facts at the Lee Avenue property in Ridgecrest (which Defendant was leasing) but received "no answer." At 8:00 a.m., Partida declares, she attempted to serve Defendant at the Felspar Avenue address. Partida says that while she was "on a public road while in [her] car," Defendant's wife "threatened to call the sheriff if [she] did not leave."[4]

Subsequently, on October 31, 2018, according to process server Kenneth Yule's declaration and attached "affidavit of reasonable diligence" (also signed under penalty of perjury), Yule unsuccessfully "personally attempted" to serve Defendant at the Felspar, California, and Lee addresses with the same amended pleading at 6:00 p.m., 6:30 p.m., and 7:05 p.m., respectively. On November 3, 2018, at 11:20 a.m. in yet another unsuccessful service attempt, according to Yule's declaration and attached affidavit of reasonable diligence, Yule saw Defendant's "two toned Dodge Ram parked in front of his gate at" the Felspar Avenue property. Finally, on November 5, 2018, at noon, according to Partida's

[4] Partida's declaration does not disclose the proximity of this road to the Felspar Avenue property or the location of Defendant's wife during this alleged incident.

declaration and proof of service, after Defendant requested to meet in a public place, Partida served Defendant at a Denny's restaurant in Ridgecrest.

Applicable Law

Quo warranto is an action for challenging whether someone lawfully holds a public office.[5] Code of Civil Procedure section 803 provides: "An action may be brought by the attorney-general, in the name of the people of this state, upon his own information, or upon a complaint of a private party, against any person who usurps, intrudes into, or unlawfully holds or exercises any public office . . . within this state."[6] If a private party desires to bring a quo warranto lawsuit in superior court, the party must first obtain leave from the Attorney General.[7] In determining whether to grant such leave to sue, we do not decide the merits of the controversy; rather, we decide whether there is a substantial issue of fact or law warranting judicial resolution and whether permitting a quo warranto action to commence would serve the overall public interest.[8]

The position of city council member is a public office for quo warranto purposes.[9] An established ground to challenge a city council member's occupation of the office in a quo warranto proceeding is that the member does not legally reside in the city.[10] Specifically, a person may not serve as a city council member unless the person resides within city boundaries when nomination papers are issued, when assuming office, and throughout the term of office.[11] For this purpose, residence means "legal residence" or "domicile."[12] Legal residence or domicile is defined as a place of physical presence joined

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[5] *Nicolopulos v. City of Lawndale* (2001) 91 Cal.App.4th 1221, 1225; 76 Ops.Cal.Atty.Gen. 157, 162-163 (1993).

[6] Code Civ. Proc., § 803; see *Rando v. Harris* (2014) 228 Cal.App.4th 868, 873; 97 Ops.Cal.Atty.Gen. 12, 14 (2014).

[7] *Nicolopulos v. City of Lawndale*, *supra*, 91 Cal.App.4th at pp. 1228-1229; 98 Ops.Cal.Atty.Gen. 85, 87 (2015).

[8] *Rando v. Harris*, *supra*, 228 Cal.App.4th at p. 879; 100 Ops.Cal.Atty.Gen. 29, 30 (2017).

[9] 99 Ops.Cal.Atty.Gen. 74, 76 (2016); 87 Ops.Cal.Atty.Gen. 30, 31 (2004).

[10] See, e.g., 99 Ops.Cal.Atty.Gen., *supra*, at p. 74; 85 Ops.Cal.Atty.Gen. 90, 90 (2002); 72 Ops.Cal.Atty.Gen. 63, 63-64 (1989); 35 Ops.Cal.Atty.Gen. 198, 198-199 (1960).

[11] Gov. Code, §§ 1770, subd. (e), 34882, 36502, subd. (a); 99 Ops.Cal.Atty.Gen., *supra*, at p. 76.

[12] *Walters v. Weed* (1988) 45 Cal.3d 1, 7; 72 Ops.Cal.Atty.Gen. 8, 11 (1989).

with the intent to make the place a permanent home.[13] It is the place where a person has "the most settled and personal connection."[14] Although a person may have multiple residences, a person may have only one legal residence/domicile.[15] Factors considered in determining domicile include the person's acts and declarations, mailing address, voter registration, tax returns, driver's license, and homeowner's exemption.[16]

Once established, a domicile is presumed to continue until it is demonstrated that a new domicile has been acquired.[17] Where a relator establishes a defendant's domicile outside the relevant locality, the defendant has the burden of showing a change of domicile inside the locality.[18] In such a case, the defendant must make a sufficient showing of "physical presence" at the alleged new domicile.[19] To satisfy the "critical element" of intent, "declarations of intent are significant," but "they are not determinative. The acts must be examined as well."[20] Although there is nothing improper about establishing a domicile in order to gain eligibility for office,[21] "[i]t is not enough that a [person] desires to acquire or keep a 'legal residence' or 'legal domicil;' the intention necessary for the acquisition of a domicil is an intention as to the fact, not as to the legal consequences of

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[13] *Fenton v. Bd. of Directors* (1984) 156 Cal.App.3d 1107, 1116; 95 Ops.Cal.Atty.Gen. 43, 46 (2012); see Elec. Code, § 349, subd. (b) ("The domicile of a person is that place in which his or her habitation is fixed, wherein the person has the intention of remaining, and to which, whenever he or she is absent, the person has the intention of returning"); Gov. Code, § 244, subd. (a).

[14] *Smith v. Smith* (1955) 45 Cal.2d 235, 239.

[15] Gov. Code, § 244, subd. (b); *Smith v. Smith*, *supra*, 45 Cal.2d at p. 239; 99 Ops.Cal.Atty.Gen., *supra*, at p. 76.

[16] 99 Ops.Cal.Atty.Gen., *supra*, at pp. 76-77; 73 Ops.Cal.Atty.Gen. 197, 209-210 (1990).

[17] Gov. Code, § 244, subd. (c); *Walters v. Weed*, *supra*, 45 Cal.3d at pp. 7-8; 90 Ops.Cal.Atty.Gen. 82, 86 (2007).

[18] *DeMiglio v. Mashore* (1992) 4 Cal.App.4th 1260, 1268-1269; 81 Ops.Cal.Atty.Gen. 98, 102 (1998).

[19] 90 Ops.Cal.Atty.Gen., *supra*, at p. 86.

[20] 72 Ops.Cal.Atty.Gen., *supra*, at p. 14; see also 85 Ops.Cal.Atty.Gen., *supra*, at p. 93 ("the most important evidence of [the council member's] intent is his conduct").

[21] See 101 Ops.Cal.Atty.Gen. 16, 21 (2018) ("Moving to an electoral district in order to run for office in that district does not defeat the intent for domicile").

the fact."[22]

Substantial Questions Exist as to Defendant's Legal Residency

It is uncontested that from October 2001 to June 2016, Defendant's domicile was his Felspar Avenue property in unincorporated Kern County outside the City of Ridgecrest. Defendant therefore carries the burden of showing that he changed his domicile to a location inside Ridgecrest before being issued his nomination papers in August 2016 and before his election in November 2016.

Based on a careful review of the parties' submissions, we have no cause to doubt that Defendant *intended* that his rental property on Lee Avenue would function as his domicile for purposes of his nomination to city council, effective July 2016, but there remains a question whether it *actually became* his new domicile—that is, a place of physical presence joined with the intent to make it his permanent home. Defendant stated only that he was leasing the property "on a temporary basis" for the sake of demonstrating legal residency in Ridgecrest. While Defendant changed his voter registration to the Lee Avenue address around the time of his nomination, he has not declared that he spent any time there, let alone lived there, nor that he took any concrete steps to make it his home. We therefore find a substantial question as to whether Defendant has carried his burden of showing that he had changed his longtime domicile to a location inside Ridgecrest at the time of his nomination.

Moreover, there is a legitimate issue whether Defendant established a domicile within Ridgecrest between his nomination in August 2016 and his election in November 2016. In October 2016, Defendant purchased a duplex on California Avenue in Ridgecrest as an "extra step" to establish legal residency. Here too, Defendant's intent that his domicile be legally considered as Ridgecrest for the purpose of the election is apparent. But again, what is lacking is any corroborating evidence of his physical inhabitation, or even his physical presence, at his temporary rental on Lee Avenue between the nomination and election. According to Defendant, he did not move into one of his duplex units on California Avenue in Ridgecrest until April 2017, after his election. We therefore also find a substantial question whether Defendant has carried his burden of showing a change of domicile to Ridgecrest before the election.

Lastly, we believe that Relator has raised a significant issue as to whether Defendant has been domiciled in Ridgecrest continuously since his election in November 2016.

[22] *Johnson v. Johnson* (1966) 245 Cal.App.2d 40, 45, internal quotation marks omitted, spelling of "domicil" and placement of semicolon in original; see *ibid.* ("A man's home is where he makes it, not where he would like to have it").

Defendant alleges that he moved into a duplex unit on California Avenue in April 2017, but that leaves the period from November 2016 to April 2017 with no evidence that he had a fixed habitation in Ridgecrest beyond his statements that he entered into a rental agreement with a friend in order to become eligible for city council. And although Defendant summarily declares that he moved into the California Avenue unit that he purchased, he does not allege how often he has been dwelling there.

In fact, the evidence submitted by Relator credibly suggests that there has been, at least, a sizable amount of time when Defendant has had no physical presence in Ridgecrest since the election. To summarize, one potential witness declares that she regularly observed Defendant's duplex unit on California Avenue from September 2017 through October 2018 (daily from September through June, and frequently thereafter), not seeing Defendant, his wife, or their cars there. Defendant was served with the original quo warranto application in the morning at his Felspar Avenue property (outside Ridgecrest), appearing as though he had just woken up, which suggests he had slept there overnight. In addition, the process servers could not locate Defendant at his Ridgecrest addresses on multiple dates, also corroborating the allegation that he has not established an abode within Ridgecrest.[23] Indeed, Defendant does not dispute that he happened to be staying at the Felspar Avenue location on the days of the investigator's stakeout in May 2018. Other evidence allegedly identifying Defendant's and his wife's vehicles and dinner parties at their Felspar Avenue property also tends to show their regular presence there.

Without purporting to resolve Relator's claim, or conclusively determine the facts at issue, we find that the totality of the evidence submitted to us raises a substantial question whether Defendant's domicile has been in Ridgecrest at all times while serving as council member.

The Overall Public Interest Warrants Allowing Relator to Pursue a Quo Warranto Action

Absent countervailing considerations, we have viewed the existence of a substantial question of fact or law as presenting a sufficient "public purpose" to warrant granting leave

[23] See 97 Ops.Cal.Atty.Gen. 1, 4 (2014) (granting an application to sue a school district trustee in quo warranto, finding that "we cannot ignore or discount his regular absence from [the residence inside the district]" and "his regular presence at [the residence outside the district]"); 95 Ops.Cal.Atty.Gen., *supra*, at p. 48 (granting an application to sue a water district director because the documents presented "indicate little physical presence at the [district] address, coupled with significant activity and evidence of residence" outside the district).

to sue in quo warranto.[24] We see no countervailing considerations here. Accordingly, Relator's application for leave to sue in quo warranto is GRANTED.

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[24] 98 Ops.Cal.Atty.Gen. 94, 101 (2015); 86 Ops.Cal.Atty.Gen. 82, 85 (2003).