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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

October 16, 2001

James F. Hendrix, Executive Director
South Carolina Election Commission
P.O. Box 5987
Columbia, South Carolina 29250

RE: Informal Opinion

Dear Mr. Hendrix:

By your letter of September 24, 2001, you have requested an opinion of this Office concerning student registration for voting purposes throughout the various counties in South Carolina. Specifically, you ask us to update an opinion of this Office issued in 1984, in light of recent statutory amendments to the state's election laws.

By way of background, you include the following information:

It is a well known fact that counties across South Carolina treat this matter without uniformity. Some counties register applicants from dormitories with no questions asked, some counties request additional proof of residency, and some counties refuse registration to dormitory addresses as a legal residency issue. Also, with the widespread use of registration by mail and motor voter, there is no way to discern an applicant is a student unless the address given is a dormitory on campus. If a student requests registration at an off campus address, such as an apartment with a valid 911 address, there is no reason to question the residency of the applicant. We feel this is not equal and fair treatment of voter registration by mail applicants.

The opinion issued in 1984 from Attorney General Travis Medlock provided a thorough analysis of voter registration law in South Carolina, as well as in other jurisdictions. A summary of that opinion may be helpful in understanding the recent developments in the law. In 1984 the Attorney General cited several South Carolina cases in developing the definition of domicile and also cited a 1971 opinion of the Office that had been challenged in District Court. The 1971 opinion concluded that college students must establish the following:

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the locale within which they seek to register and vote is their domicile, i.e., that they are living in the college community with the intention of abandoning their former domicile and with the intention of remaining permanently, or for an indefinite length of time in the new location.

OP. ATTY GEN. Nov. 22, 1971.

As explained in the 1984 opinion, the 1971 opinion then offered a list of factors that local registration boards may take into account in determining whether a student could establish residency. Those factors included information such as whether the applicant was registered to vote in another location, where the applicant maintained personal property, the applicant's ties to the community, the applicant driver's license address, where the applicant pays taxes, where the automobile is registered, and if employed, where the applicant's job is located. See OP. ATTY. GEN. Apr. 11, 1984.

This list of factors was later challenged in an action in the United States District Court of South Carolina that claimed that the laws and practices of South Carolina concerning the registration of college students violated the U.S. Constitution. See *Dyer v. Huff*, 382 F.Supp 1313 (D.S.C. 1973). The Court considered whether the county registration boards could look behind the written declarations of the applicants by inquiring about the factors suggested by the opinion. The Court said:

[t]he Board would be derelict in its duty to blindly accept a statement of residency by each applicant. There is nothing wrong or even suspect in registration officials asking college boarding students, whose permanent addresses are outside the county, certain questions to determine residency and their qualifications. . . . These questions and the procedures of the defendants are fair, reasonable, and adequate to determine residency. . . .

382 F.Supp. at 1316.

Based upon the district court's approval of the 1971 opinion and other authority, the 1984 opinion concluded the following:

in order for students to be registered to vote in the community in which they attend college, they must show that they are domiciled in that community; in short, it must be demonstrated that '*they are living in the college community with the intention of abandoning their former domicile and with the intention of remaining permanently, or for an indefinite length of time in the new location.*' Op. Atty. Gen., November 22, 1971. And in order to ascertain whether students meet this legal standard, the factors outlined in the 1971 opinion may be utilized. *Dyer v. Huff*, *supra*.

OP. ATTY. GEN. Apr. 11, 1984 (emphasis added).

This standard differed from that of the courts in other jurisdictions. Other courts have adhered to a less stringent showing of domicile to establish residency for voting purposes. "[t]hese courts, recognizing the fundamental nature of the right to vote, have generally concluded that students who are living in the college community and plan to remain there at least until graduation may be registered to vote there." OP. ATTY. GEN. Apr. 11, 1984. Courts have also struck down practices of local registration boards that presented unnecessary burdens on students in their efforts to register to vote. In Sloane v. Smith, 351 F. Supp. 1299 (M.D.Pa. 1972), the court said that students could not be required to meet more stringent tests of residency than other classes of people. Moreover, students could not be required to fill out questionnaires not used for other applicants; instead, a general application equally relevant to all applicants must be used. Shivelhood v. Davis, 336 F. Supp. 1111 (D.Vt. 1971).

As stated before, the 1984 opinion provided an exhaustive analysis of election law in South Carolina and throughout other jurisdictions. The Supreme Court of South Carolina still has not, to date, directly addressed the issue of students registering to vote in their college communities. However, the General Assembly recently attempted to clarify the registration requirements. Act No. 103, 1999 Acts and Joint Resolutions added provided the following definitions:

- (A) A person's residence is his domicile. "Domicile" means a person's fixed home where he has an intention of returning when he is absent. A person has only one domicile.
- (B) For voting purposes, a person has changed his domicile if he (1) has abandoned his prior home and (2) has established a new home, has a present intention to make that place his home, and has no present intention to leave that place.
- (C) For voting purposes, a spouse may establish a separate domicile.

S.C. CODE ANN. § 7-1-25.

With the passage of Act No. 103, South Carolina law now has a specific definition of domicile. Subsection (B) is particularly relevant to college students seeking registration in their college communities. This subsection also indicates the shift in South Carolina jurisprudence toward a less stringent standard for establishing residency by these applicants. A comparison of the previous standard (as delineated in the 1984 opinion) reveals the differences. Previously, the students had to live "in the college community with the intention of abandoning their former domicile and with the intention of remaining permanently, or for an indefinite length of time in the new location." According to Subsection (B), today's student must have also abandoned his home, but must also have only a "present intention" to remain with "no present intention to leave." In the 1999 enactment, the intent of the applicant remains the key to determining residency, but the focus changes from a long-term commitment to remain in the college community to only a present intention to remain.

Thus, the conclusions of the 1984 opinion are superceded by the recent statutory enactment.

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However, although the law has changed regarding the intention of the applicant, local registration boards are still allowed to take steps to ensure that the applicant is, indeed, properly a resident of the community in which he seeks to register. Act No. 103, 1999 Acts and Joint Resolutions, also amended Section 7-5-230 to provide more details of the procedure for challenging the qualifications of an applicant for registration. Notably, Section 7-5-230 states, in part:

When a challenge is made regarding the residence of an elector, the board may consider the following proof to establish residence including, but not limited to, income tax returns; real estate interests; mailing address; address on driver's license; official papers and documents requiring the statement of residence address; automobile registration; checking and savings accounts; past voting record; membership in clubs and organizations; location of personal property; and the elector's statements as to his intent.

As the provision indicates, the relevant factors for determining voter registration offered by the 1971 and 1984 opinions of this Office remain valid inquiries for local registration boards for any applicant of questionable qualifications. Only the standard for the intent of the applicant has changed.

As a practical matter, the disparate treatment of the registration of students across South Carolina is a matter that is probably best addressed by the State Election Commission, as that agency is more appropriately suited to coordinate and advise local boards on the mechanics of voter registrations. The boards now have a statutorily mandated standard of residency to apply, and a more clearly defined procedure for investigating residency qualifications. A student cannot be held to a higher standard of residency than any other applicant. However, just as in any other case in which the local board questions the qualifications of the voter, the board can inquire further to ensure that the student meets the residency requirements of Section 7-1-25.

We would caution against one practice mentioned in your letter. A student applicant should not be denied registration solely because the student lists a dormitory as his address. This practice has been challenged in other jurisdictions and struck down as violative of the U.S. Constitution. While this fact may be a basis for further investigation by the voter registration board, a student certainly may live in a dormitory and satisfy the requirements of Section 7-1-25. By illustration, in Williams v. Salerno, 792 F.2d 323 (2nd Cir. 1986), the Second Circuit Court of Appeals found that a county election board could not deny the right to register any student of a state university on the ground that the student's dormitory could not be a residence for voting purposes. In Williams, the elections board sent approximately 450 students a letter summarily denying their applications to register to vote, stating that a college dorm is not "a place where a person maintains a fixed, permanent, and principal home and to which he, wherever temporarily located, always intends to return," as required by New York election law. Williams, 792 F.2d at 328. The Court said that by denying the students registration on the basis of a dorm room address, the boards created a per se rule against the students' residency. The Court interpreted "permanent" in the election law to mean that the person "must be physically present with the intent to remain for the time at least." Id. The Court

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also stated, "Although students living in dormitories may often lack the intent to remain in the place where they attend school, it is certainly possible for a person to abandon his or her former residence with the intent to remain in the place where he or she attends school." Id.

If the courts of the Second Circuit apply this reasoning to New York election law's definition of residence, then certainly South Carolina's now less stringent standard of Section 7-1-25 could also include a dormitory within its scope. The student no longer has to intend to remain in the dormitory permanently or indefinitely. Now, as long as the student can demonstrate that he has abandoned his prior home, established the dormitory as his new home, has a present intention to make that dormitory his home, and has no present intention to leave, then that student cannot be denied the right to register to vote.

In sum, the statutory inclusion of the definition of domicile in Section 7-1-25 reflects a change in South Carolina law toward a less stringent standard of residency for applicants. As always, the intent of the applicant is critical for determining residency. However, as opposed to the previous standard, in which the applicant must have intended to remain in the community permanently or indefinitely, the standard now requires the applicant to have only a present intention to remain in the community. With respect to college students, we would expect the statutory amendment to reduce barriers to registration. As far as the manner in which local registration boards address the matter, we strongly suggest a coordinated effort with the State Elections Commission to establish some uniformity in the application of the state's election laws. Perhaps, for example, the requirements of Section 7-1-25 might be incorporated into the voter declaration statement on the application. This might provide some clarification of the residency requirements to both the local boards and the potential applicants.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Susannah Cole
Assistant Attorney General