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October 16, 1987

Ms. Vicki Harris
School Board Trustee
Union County
111 Rosewood Terrace
Union, South Carolina 29379

Dear Ms. Harris:

You have requested the opinion of this Office as to the validity of a proposal policy (policy) of the Union County School Board of Trustees which would require all administrative level employees, assistant principals and above, to reside in Union County. Based upon your letter, I am making the following assumptions for the purposes of this opinion; 1) the policy would not require employment applicants to reside in Union County at the time of hiring but would require that they obtain residence within an "ample" period of time following employment and 2) the policy would not apply to present employees not residing in Union County.

Generally, policies requiring public employees to reside within the territory of their employing agencies have been upheld against a variety of constitutional challenges, at least when, as here, the policies do not exclude non-resident applicants who are willing to establish residence following employment. 1/ McCarthy v. Philadelphia Civil Service Commission, 424 U.S. 645, 47 L.Ed.2d 366, 96 S.Ct. 1154 (1976); Mogle v. Sevier County School District, 540 F.2d 478 (10th Cir. 1976); Wardwell v. Board of Education of City School District, etc., 529 F.2d 625 (6th Cir. 1976); Brown v. New Haven Civil Service Board, 474 F.Supp 1256 (DC Conn 1979); Pittsburgh Federation of Teachers v. Aaron, 417 F.Supp 94 (WD Pa. 1976); Miller

1/ "[A] resident of one state is constitutionally entitled to travel to another state for purposes of employment free from discriminatory restrictions in favor of state residents imposed by the other state. Hicklin v. Orbeck, 437, U.S. 518, 517 L.Ed.2d 397, 98 S.Ct. 2482 (1978); see Ops. Atty. Gen. (October 20, 1983).

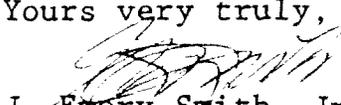
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v. Krawczyk, 414 F.Supp 998 (ED Wis. 1976); City and County of Denver v. Industrial Commission, 666 P.2d 160 (Colo App. 1983); 4 A.L.R. 4th 380; see Kansas City, Kansas Fraternal Order of Police v. City of Kansas City, 620 F.Supp 752 (D.C. Kan 1984). Such requirements have been found not to violate rights of travel on an interstate (McCarthy, supra) or intrastate (Brown) basis. They have also withstood claims that they violate constitutional rights of substantive due process (Mogle; see Kansas City), and deny the equal protection of the laws (Mogle; Miller; Pittsburgh). See also, Denver, supra. Although many of the cases have addressed residency requirements for policemen and firemen (McCarthy, Brown, Denver; 4 A.L.R. 4th 380; see also, Kansas City), the authority of those cases can be applied to the instant matter along with those cases that have expressly addressed such requirements for school personnel (Mogle, Wardwell and Pittsburgh).

To withstand challenge under the equal protection clause, the policy in question must bear some rational relationship to a legitimate state purpose. Mogle. The following purposes of a school district's school district's residency policies were found to be sufficient: "...personal knowledge of conditions in the school district, a feeling of greater personal stake in the district and diminution of absenteeism and tardiness..." Pittsburgh, 417 F.Supp at 97. See also, Wardwell, 529 F.2d at 628; Mogle, 540 F.2d at 484. In addition, courts have upheld consideration of the financial impact of residents on the local community as justification for residency requirements. See Miller, 414 F.Supp at 998 and Denver, 666 P.2d at 163. Therefore, if the policy in question is supportable by rational reasons, a court would be likely to conclude that it satisfies equal protection requirements.

In conclusion, the above authority indicates that the policy in question would be likely to be upheld if it is supported by rational reasons. If you have any questions, please let me know.

Yours very truly,


J. Emory Smith, Jr.
Assistant Attorney General

JESjr/srcj

REVIEWED AND APPROVED:


Robert D. Cook
Deputy Attorney General