

The State of South Carolina



Office of the Attorney General

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May 14, 1987

The Honorable George H. Bailey
Member, House of Representatives
308C Blatt Building
Columbia, South Carolina 29211

Dear Representative Bailey:

By your letter of May 6, 1987, you have asked that this Office address two questions:

1. Can a school board member serve on a local school board and live not only out of the district he represents, but out of the county?
2. Can a legislative delegation or a member thereof request a copy of the expenditures of the school districts represented by the delegation?

Each of your questions will be addressed separately, as follows:

Question 1

You have advised that an individual was elected to serve on Dorchester County School District 3; after consolidation of two school districts, he was appointed by the Dorchester County Board of Education to serve on the new school board of District 4. This Office has not been supplied with facts as to the residential circumstances of the individual in question; of necessity, then, this Office can offer only general comments on the situation.

The executive committee of Dorchester County School District 4 was established pursuant to Section 3 of Act No. 536 of 1986. While future trustees will be elected from single-member districts, no such specific residency requirement is specified in Act No. 536 for the executive committee members presently in office. At the very least, however, Article XVII, Section 1 of the State Constitution requires that public officers elected or

2770
Library

The Honorable George H. Bailey
Page 2
May 14, 1987

appointed to any office be qualified electors; such qualifications include residence. See Section 7-5-120, Code of Laws of South Carolina (1976 & 1986 Cum. Supp.).

This Office has addressed the residence of individuals in many opinions; enclosed are Ops. Atty. Gen. dated August 29, 1983; August 27, 1985; January 15, 1965; and May 5, 1958. Whether an individual has moved his residence is, as you will see, a mixed question of fact and law. As is stated in the opinion of January 15, 1965, "The permanent residence of an elector is not affected by a temporary absence when the intention of such absence is not to be permanent." Furthermore, "a person may move from his original home, and voting place, and live elsewhere but retain his legal domicile at his original home and be able to return to the original home to vote." Op. Atty. Gen. dated May 5, 1958.

The South Carolina Supreme Court, in Clarke v. McCown, 107 S.C. 209, 92 S.E. 479 (1917) has stated:

The residence of a person is a mixed question of law and fact; and the intention of that person with regard to the matter is deemed the controlling element of decision. His intention may be proved by his acts and declarations, and perhaps other circumstances; but when these, taken all together, are not inconsistent with the intention to retain an established residence, they are not sufficient in law to deprive him of his rights thereunder, for it will be presumed that he intends to continue a residence gained until the contrary is made to appear, because inestimable political and valuable personal rights depend upon it. Therefore it is a serious matter to deprive one of his residence, and it should not be done upon evidence which is legally insufficient

That a man does not live or sleep or have his washing done at the place where he has gained a residence, or that his family lives elsewhere, or that he engages in employment elsewhere are facts not necessarily inconsistent with his intention to continue his residence at that place

Id., 107 S.C. at 213-214.

The Honorable George H. Bailey
Page 3
May 14, 1987

The foregoing principles of law have been applied by this Office to situations in which residency has been permanently moved elsewhere (Op. Atty. Gen. dated August 27, 1985) and in which an absence was deemed to be temporary (Op. Atty. Gen. dated August 29, 1983). As you will see from the enclosed, different results were reached in each case. Because the circumstances surrounding the individual described in your letter are not known to this Office, we cannot reach a conclusion as to whether his residence in Dorchester County has been abandoned. Such a determination can be made only by ascertaining the individual's intentions, having reviewed all of the relevant facts.

Question 2

You have also inquired as to whether a county legislative delegation or member thereof may request a copy of the expenditures of the school districts represented by the delegation. The Freedom of Information Act, Section 30-4-10 et seq. of the Code, specifically applies to school districts. See Section 30-4-20(a) (definition of public body). Section 30-4-50(6) specifically declares that "information in or taken from any account, voucher or contract dealing with the receipt or expenditure of public or other funds by public bodies" is to be public information unless some other provision of the Freedom of Information Act should limit disclosure. Thus, the delegation or any member thereof (and any interested citizen) would be entitled to inspect or copy relevant public records dealing with information about expenditure of public funds by a public body unless some other restriction of law should apply.

With kindest regards, I am

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosures

REVIEWED AND APPROVED BY:

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