



ALAN WILSON
ATTORNEY GENERAL

August 4, 2026

Mr. G. P. Callison, Jr., Esquire
McCormick County Attorney
116 County Line Road E.
Bradley, SC 29819-2648

Dear Mr. Callison:

Attorney General Alan Wilson referred your letter to the Opinions section for a response. You seek an opinion regarding residency requirements for McCormick County Council and the effect of recent county boundary adjustments on Council Member Brown's eligibility to hold office. Specifically, you advise that recent modifications to the boundary between McCormick County and Edgefield County resulted in the property and house of Council Member Brown sitting in both McCormick County and Edgefield County. In light of these adjustments, you ask:

1. Since a portion of her home and most of the property remains in McCormick County, is Councilperson Brown still considered a resident of McCormick County eligible for reelection in November 2026?
2. Under these circumstances, other than the court, who or what entity has the authority to make a determination regarding Councilperson Brown's residency and domicile? Who – or what entity – decides if she is a resident of McCormick or Edgefield County?
3. Did the change in the county boundary pursuant to SCGS County Boundary Program result in a vacancy in the office for District Five?
4. Does Councilperson Brown continue to serve as a *de facto* member of County Council until her successor is elected or appointed? Does she retain the right to vote and participate in Council decisions? I am familiar with previous Attorney General Opinions and case law which indicate that a *de facto* member of Council continues to serve until a successor is elected or appointed. Please confirm this.
5. Can Councilperson Brown change her residence to another location in McCormick County District 5 thereby making her eligible for reelection in November?
6. If Councilperson Brown is deemed a resident of Edgefield County, do the circumstances presented require an election or an appointment?

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Your questions are answered in turn below, but we must note that the Office can only render an opinion on general questions of law; it cannot make factual determinations. Op. S.C. Att’y Gen., 2003 WL 21040130 at *1 (Feb. 19, 2003) (“Because this Office does not have the authority of a court or other fact-finding body, we are not able to adjudicate or investigate factual questions.” (quoting Ops. S.C. Att’y Gen., Oct. 10, 1985, at *2 and Sept. 3, 1999, at *2)). Therefore, the Office can offer a general opinion on residency requirements, the effect of an officeholder no longer residing in the district which they represent, and the method of filling a vacancy, but the Office cannot determine whether Council Member Brown is a resident of McCormick County. That determination should be made by the McCormick County Board of Voter Registration and Elections or a South Carolina court, as described below.

Law/Analysis

We begin by reviewing the general law regarding residency and county council members. Article XVII, § 1 and Article VI, § 1 of the South Carolina Constitution require that an officeholder possess the qualifications of an elector. Article VI, section 1, specifically provides that “No person may be popularly elected to and serve in any office in this State or its political subdivisions unless he possesses the qualifications of an elector.” S.C. Const. art. VI, § 1. South Carolina Code Section 7-5-120 details the qualifications of an elector. In particular, Section 7-5-120 requires that an elector be “a resident of the county and in the polling precinct in which the elector offers to vote.” S.C. Code Ann. § 7-5-120(A)(3) (2019).

Section 4-9-90 governs the election of county council members. The first paragraph of Section 4-9-90 provides in part that “[i]n the event the members of the governing body are required to be elected from defined single-member election districts, they must be elected by the qualified electors of the district in which they reside.” S.C. Code Ann. § 4-9-90 (2021). The final paragraph of § 4-9-90 provides that “[f]or the purpose of this section, a council member will be deemed a resident of the district he represents as long as he resides in any part of the district as constituted at the time of his election.” Id. You advise that the McCormick County Council consists of five members elected from single-member districts.

Considering these constitutional and statutory provisions, in order to be elected to a county council position in a county in which elections are held according to defined single-member districts, like McCormick County, a candidate must be a qualified elector who resides in the district they represent.

To run for office, candidates “file [a] statement of candidacy with the authority responsible by law for conducting the election.” S.C. Code Ann. § 7-13-352 (2019). County council elections are conducted by the county board of voter registration and elections. After filing, the authority responsible for conducting the election, in this case the county board of voter registration and elections, “must verify that each candidate meets, or will meet by the time of the general election, or as otherwise required by law, the qualifications for the office sought.” Id. “Any candidate who does not, or will not by the time of the general election, or as otherwise required by law, meet the

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qualifications for the office sought shall not have his name placed on the ballot.” Id. Thus, for county council elections, county boards of voter registration and elections have the first responsibility to verify a candidate’s eligibility for office, including their residency.

A candidate’s qualification may be challenged in court under the Declaratory Judgments Act (the “Act”). The Act states, “[A]ny person interested . . . whose rights, status or other legal relations are affected by a statute . . . may have determined any question of construction or validity arising under the . . . statute . . . and obtain a declaration of rights” S.C. Code Ann. § 15-53-30 (2005). This Office has previously opined that the Act serves the same function as a writ of *quo warranto* to determine a person’s eligibility to hold title to office. See Op. S.C. Att’y Gen., 2007 WL 419410, at *3 (January 17, 2007) (discussing procedure for determining officer’s eligibility for office and removal from office if found ineligible). Accordingly, the Act authorizes our state courts to determine an officer’s eligibility and permits the courts to order removal when warranted. See Florence Ctv. v. Moore, 344 S.C. 596, 545 S.E.2d 507 (2001) (determining eligibility of county treasurer appointed by governor to serve remainder of the office’s unexpired term).

While qualifications for office are determined as of the date of election, this Office has advised previously that qualifications, such as residence, continue throughout the officer’s tenure. Op. S.C. Att’y Gen., 1993 WL 494585 (Oct. 18, 1993) (citing Op. S.C. Att’y Gen. dated August 27, 1985; 67 C.J.S. Officers § 18). Elected officials must maintain their status as qualified electors throughout their term of office or the office is forfeited. Ops. S.C. Att’y Gen., 2020 WL 7862620, at *3 (December 17, 2020) (Residency “must be maintained throughout the official’s term of office and the failure to do so results in a vacancy or forfeiture of the office.”); 2006 WL 981694, at *3 (March 28, 2006) (“[P]ublic officers vacate or forfeit their offices at the time they ceased to be a resident of the affected district or political subdivision.”).

If a member vacates their seat, they continue to serve in a *de facto* capacity until a successor is elected and seated. See Op. S.C. Att’y Gen., 2006 WL 981694, at *3 (March 28, 2006) (“[T]he decision in Bradford v. Byrnes, 221 S.C. 255, 70 S.E.2d 228 (1952), states that ‘in the absence of pertinent statutory or constitutional provision, public officers hold over de facto until their successors are appointed or elected and qualify.’”). We are not aware of any changes in law which alter our prior opinions regarding this point.

Filling vacancies on county council is governed by Section 4-9-90. Pursuant to Section 4-9-90, “Vacancies on the governing body shall be filled in the manner of original election for the unexpired terms in the next general election after the vacancy occurs or by special election if the vacancy occurs one hundred eighty days or more prior to the next general election.” S.C. Code Ann. § 4-9-90 (2021). There are less than one hundred and eighty days until the next general election, on November 3, 2026.

Having reviewed the general law, we now turn to your questions. The determination of residency is a mixed question of fact and law. Op. S.C. Att’y Gen., 2021 WL 2460869 at *2 (June 11, 2021). This Office cannot make factual determinations. Op. S.C. Att’y Gen., 2003 WL

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21040130 at *1 (Feb. 19, 2003). Therefore, we cannot determine whether Council Member Brown is a qualified elector in McCormick County or Edgefield County. As is described above, Council Member Brown's residency should be determined first by the McCormick Board of Voter Registration and Elections, but the question may also be raised in a South Carolina court pursuant to the Declaratory Judgments Act.

If the revision of the boundary between McCormick County and Edgefield County made Council Member Brown a resident of Edgefield County, then she is no longer a resident of McCormick County, and is no longer a qualified elector in McCormick County. Elected officials must maintain their status as qualified electors throughout their term of office or the office is forfeited. Ops. S.C. Att'y Gen., 2020 WL 7862620, at *3 (December 17, 2020); 2006 WL 981694, at *3 (March 28, 2006). Thus, if Council Member Brown is a resident of Edgefield, then her position on McCormick County Council has been forfeited and the seat is vacant.

If a member vacates their seat, they may continue to serve in a *de facto* capacity until a successor is elected and seated. See Op. S.C. Att'y Gen., 2006 WL 981694, at *3 (March 28, 2006); Bradford v. Byrnes, 221 S.C. 255, 70 S.E.2d 228 (1952). Thus, even if Council Member Brown is a resident of Edgefield County, she may continue to serve in a *de facto* capacity until her successor is seated.

The county board of voter registration and elections "must verify that each candidate meets, or will meet by the time of the general election, or as otherwise required by law, the qualifications for the office sought." S.C. Code Ann. § 7-13-352 (2019). If Council Member Brown is now a resident of Edgefield County but becomes a qualified elector of McCormick County prior to the general election in November, then she would be eligible to be on the ballot for McCormick County Council in November.

"Vacancies on the governing body shall be filled in the manner of original election for the unexpired terms in the next general election after the vacancy occurs or by special election if the vacancy occurs one hundred eighty days or more prior to the next general election." S.C. Code Ann. § 4-9-90 (2021). If there is currently a vacancy on the McCormick County Council, there are less than one hundred and eighty days until the next general election, on November 3, 2026. Therefore, the vacancy should be filled in the next general election.

Conclusion

The general law regarding County Council membership and residency may be summarized as follows. County Council members must be qualified electors for the district they represent, and they must maintain this status for the entire time in office. A candidate's residency is verified at the time of filing by the county board of voter registration and elections, but it may also be subject to a declaratory judgment action in court. If a council member no longer resides in the district they represent, then they are not eligible for reelection. However, if the council member reestablishes themselves a qualified elector for that district prior to the election, then they would be eligible for

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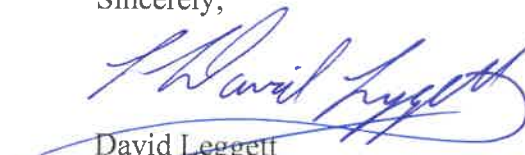
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election. If a council member no longer resides in their district during their tenure, the position is forfeited, and the office becomes vacant. A council member may continue to serve in a *de facto* capacity after vacating their seat. Vacancies which occur less than one hundred eighty days prior to the next general election, should be filled at the next general election.

Regarding Council Member Brown's residency and eligibility, the Office cannot make factual determinations. Op. S.C. Att'y Gen., 2003 WL 21040130 at *1 (Feb. 19, 2003) ("Because this Office does not have the authority of a court or other fact-finding body, we are not able to adjudicate or investigate factual questions." (quoting Op. S.C. Att'y Gen., Oct. 10, 1985, at *2 and Sept. 3, 1999, at *2)). Therefore, we cannot determine whether Council Member Brown is a resident of McCormick County or Edgefield County or whether she is a qualified elector in McCormick County, as required to be a member of the McCormick County Council.

Sincerely,



David Leggett
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General Emeritus