



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
 ATTORNEY GENERAL

March 17, 2004

V. Keith Callicutt, Ph.D., District Superintendent
 Newberry County School District
 Post Office Box 718
 Newberry, South Carolina 29108

Dear Dr. Callicutt:

In a letter to this office you requested an opinion as to the status of a member of the Newberry County Board of Education who no longer lives in the district from which the member was elected. You indicated that the fact that the member no longer lives in the district is not entirely a matter of choice but instead results from an order of the family court which ordered the member to move out of the marital home. The member has complied with the order but has not found a residence within the district and as a result, has moved into a home in another district.

Act No. 485 of 1998 provides as to the Newberry County Board of Education that members are elected from single member districts. It further provides that

Each member of the board must be elected by the qualified electors of the single member district from which he seeks election. All persons desiring to qualify as a candidate shall file a petition...(which)...must be a sworn statement stating the candidate's name, age, election district in which he resides and from which he seeks election, voting precinct, period of residence in the county and election district, and other information as the county election commission requires.

You have asked whether such provision requires that members reside in the district from which they are elected after their election.

As specified by Act No. 485, an individual seeking to qualify as a candidate for the Newberry County Board of Education must specify the election district in which he resides and from which he seeks election. Generally, Article XVII, Section 1 and Article VI, Section 1 of the State Constitution require that an office holder possess the qualifications of an elector. Pursuant to S.C. Code Ann. Section 7-5-120 (Supp. 2003), an elector must be a "resident in the county and in the polling precinct in which the elector offers to vote." As stated in a prior opinion of this office dated October 18, 1993, "(w)hile one's qualification for office is determined as of the date of election, this office has advised previously that qualifications such as residence are deemed to be continuing throughout the

Dr. Callicut
Page 2
March 17, 2004

officer's tenure." Therefore, in my opinion, in order to serve as a member of the Board, an individual must continue his status as an elector and, therefore, continue to reside in the district from which he sought election.

You next asked whether removal from the district of election pursuant to a temporary family court order, but where the member states that he intends to eventually return to the district of election, requires a vacancy in that district. Generally, residency is a mixed question of fact and law and turns on the individual's intent. Ops. Atty. Gen. dated May 7, 1991 and July 7, 1999. As stated in a prior opinion of this office dated March 8, 1995 citing the decision in Clarke v. McCown, 107 S.C. 209, 92 S.E.479 (1917)

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.

The referenced opinion further stated that

This office has previously stated that "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. This is a question of fact..." This office has opined that "the permanent residence of an elector is not affected by a temporary absence when the intention of such absence is not to be permanent..."(T)he question of residence depends on the individual's intent, and such is a question of fact.

In order to determine whether the individual referenced in your letter is a resident of the district from which he was elected, it is necessary to examine his intent as manifested by his declarations and actions. Op. Atty. Gen. dated August 29, 1983. You indicated that the individual's stated intention is to move back to the district from which he was elected. However, this office lacks a sufficient factual basis to determine the legal residence of the individual referenced in your letter. Again, the question of residence depends upon an individual's intent and is a question of fact. This

Dr. Callicut
Page 3
March 17, 2004

office has repeatedly indicated that an opinion of this office cannot determine facts. See Ops. Atty. Gen. dated November 4, 2003 and August 13, 2001.

As to your third question as to whether the failure of the individual to return to the former district will disqualify the member from filing as a candidate for reelection from that district, again, the matter of residence depends upon the individual's intent. A response would be dependent on the individual facts in this case and would not be a matter for resolution by an opinion of this office.

I can only suggest that you and the school board attorney review the facts in this case in light of the information we have supplied in order to make a determination as to the member's status.

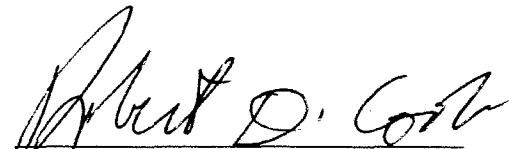
With kind regards, I am,

Very truly yours,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General