January 11, 2008

The Honorable Herb Kirsh
Member, House of Representatives
Box 31
Clover, South Carolina 29710

Dear Representative Kirsh:

We understand from your letter that you seek an opinion of this office regarding determination of domicile for voter registration purposes. You enclosed a letter from Mr. Steven D. Rast, Sr., Chairperson of the York County Registration and Elections Office (also referred to as "the Commission"). As we understand his letter, it raised the following questions:

> 1. When potential registrants appear to be living at what are normally believed to be temporary residences, such as motels, rooming houses, and college dormitories, can the Commission inquire further into domicile by issuing a questionnaire or using a set of written guidelines?
>
> 2. Is the Symm case (United States v. State of Texas, et. al.,445 F. Supp. 1245 (S.D. Tex. 1978)) applicable to the Commission's determination of domicile?
>
> 3. In determining the domicile of college students, can the Commission give weight to the permanent address of the registrant as recorded by the school?
>
> 4. What weight should the Commission give the language of S.C. Code Sec. 59-112-10 (D), which references a presumption that college housing is not a place of principal residence?

Mr. Rast stated that he is aware of two prior opinions issued in 1984 and 2001 by this Office on the matter of domicile for voter registration purposes. He inquired as to any relevant court decisions after the 2001 opinion.

Law/ Analysis

The definition of "domicile" for voter registration purposes is found in S.C. Code § 7-1-25:

> (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.

Domicile is a mixed question of law and fact, and a person's intentions in this regard "may be proved by his acts and declarations, and perhaps other circumstances." Op. S.C. Atty. Gen., Nov. 22, 1971, citing Clarke v. McCown, 107 S.C. 209, 92 S.E. 479. As we stated in our 1984 opinion, intent "is a most important element in determining the domicile of any individual." Ravenel v. Dekle, 265 S.C. 364, 218 S.E.2d 521 (1974). Intent is primarily an issue of fact, determined on a case by case basis. Ferguson v. Employers Mut. Cas. Co., 254 S.C. 235, 174 S.E.2d 768 (1970). Op. S.C. Atty. Gen. Apr. 11, 1984.

I. Further Inquiry via a Questionnaire or Written Guidelines

Our 1984 opinion specifically addressed the issue of determining domicile for college students, referencing our 1971 opinion on the subject. In the 1971 opinion, we stated that "...college students, minors or non-minors must be treated as other citizens for voting purposes and can establish a legal residence for voting purposes within the locale in which his college or university is located..." Op. S.C. Atty. Gen., Nov. 22, 1971. It is clear, therefore, that a college student may establish a domicile in the voting district where the college is located.

We also opined that "a board of registration is not bound by the statement of residency sworn to by a student or any other applicant for registration on his application form, nor is a board bound by an applicant's oral declarations as to his intentions. Further inquiries can be made of an applicant to determine if the facts and circumstances are consistent or inconsistent with his stated intent, and based upon these inquiries, a registration board can make an independent determination of whether an applicant is qualified under the residency provisions." Op. S.C. Atty. Gen., Nov. 22, 1971. This was re-affirmed in our 1984 opinion.

In making further inquiry to determine whether domicile has been established for voting purposes by a student, as well as any other applicant, we offered the following list of factors to consider:

> 1) Has the applicant registered to vote elsewhere?
> 2) If married, where does his or her spouse reside?
> 3) Where does the applicant keep his personal property?
> 4) Does the applicant have any community ties to the locale he claims as his domicile-membership in church, social or service clubs, etc.?
> 5) Where does the applicant maintain his checking and saving accounts, if any?
> 6) Where does the applicant pay taxes, and what address did he list as his residence on his last income tax return?
> 7) What is the residence listed on the applicant's driver's license? (State law requires a person moving permanently from the address listed on his license to notify the Department within ten days after the change of address. Section 46-170.)
> 8) If the applicant owns an automobile, where is it registered? (Section 46-78 allows an automobile owner 30 days within which to notify the State Highway Department of an address change and to obtain a corrected registration card.)
> 9) If the applicant is employed, where is his job located?
> 10) Does the applicant live year round at his claimed domicile, or does he divide it elsewhere? If it is divided, how much time is spent elsewhere and for what reason?
> 11) What residence does the applicant list on his selective service registration, hunting or fishing licenses, insurance policies, or other official papers and documents which require a statement of residence or address?

Op. S.C. Atty. Gen. Nov. 22, 1971.

This list was not intended to be exhaustive, and we clarified that relevant factors and circumstances other than those listed may be inquired into by registration boards. Id.

As we noted in our 2001 opinion, the Court has supported the proposition that county registration boards can look behind the written declarations of the applicants by inquiring about the factors suggested by the 1971 opinion. In Dyer v. Huff, 382 F. Supp. 1313 (D.S.C. 1973), the Court stated:

> The 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.

As we previously opined, and as the Court stated in Dyer, it is permissible for a registration board to inquire further into an applicant's intent. Therefore, it is our opinion that when determining the domicile of an applicant, a registration board may utilize a questionnaire, or a set of written guidelines, as long as it is based on the factors outlined in our 1971 opinion and examined in Dyer.

We caution, however, that since constitutional issues of equal protection and the right to vote, which is deemed a fundamental right, are at stake, the Commission should keep in mind that many factors are to be considered in determining domicile; no one factor is dispositive. Our 2001 opinion also reminds registration boards that "[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." Op. S.C. Atty. Gen., Oct. 16, 2001.

Cases from other jurisdictions also caution against making one factor dispositive. See, e.g., Lloyd v. Babb, 296 N.C. 416, 437, 251 S.E.2d 843, 857, which held that "...a student who intends to remain in his college community only until graduation should not for that reason alone be denied the right to vote in that community."

II. The Symm Case

In Mr. Rast's letter, he inquired how the Symm case applies when determining domicile, especially for college students who live in dormitories. In the Symm case (United States v. State of Texas, et. al., 445 F. Supp. 1245 (S.D. Tex. 1978), the court found that the practices of the registrar in Waller County, Texas violated the 26th Amendment. In consistently denying student applications for registration, the registrar had been applying a statutory presumption of non-residency that had been declared unconstitutional by the 5th Circuit.

In our 1984 opinion, we examined cases from other jurisdictions on the subject of voter registration of students. Symm was one of the cases we discussed. We noted that Symm involved the presumption that college students were domiciled where their parents were resident; students in one county were required to complete a questionnaire in order to rebut the presumption. To be registered, students had to show factors such as being married and living with their spouse in the county and obtaining the promise of a job in the county upon graduation. Dormitory rooms could

not be considered residences. The Court concluded that these practices violated the 26th Amendment. See Op. S.C. Atty. Gen., Apr. 11, 1984.

As we noted in the 1984 opinion, the cases from other jurisdictions that we discussed, including Symm, do not presently reflect the law in South Carolina relating to the definition of domicile. Only the Court or the General Assembly may modify that law. This is not to say, of course, that the constitutional analysis of Symm is inapplicable. On the contrary, it provides a note of caution against a pattern of conduct that abridges the fundamental right to vote.

We assume that Mr. Rast inquires about Symm because in that case, the voting registrar used a questionnaire. In Symm, the questionnaire per se was not challenged; the problem was that the questionnaire was "an integral part of a pattern of conduct which abridged the voting rights of a segment of the citizenry." 445 F. Supp. 1245 at 1259.

III. Permanent Address in School Records

The next question raised in Mr. Rast's letter was whether, in the case of college students, the Commission can give weight to the permanent address of the registrant as recorded by the school. It is our opinion that the Commission may consider it as one factor among many to be weighed in making the determination of domicile on a case-by-case basis. See discussion of Dyer v. Huff, supra, Section I. However, the Commission should not adopt a presumption that a student's "permanent address" listed in school records is his domicile for purposes of voter registration. Such a presumption would run the risk of being struck down as unconstitutional, like the presumption in Symm. As stated above, many factors are to be considered when determining domicile; no one factor is dispositive.

IV. S.C. Code Sec. 59-112-10 (D)

The final question raised in Mr. Rast's letter relates to the applicability of S.C. Code Sec. 59-112-10 (D), which references a presumption that college housing is not a place of principal residence. This definition of domicile is found in Title 59 (Education) and Chapter 112 (Determination of Rates of Tuition and Fees). Subsection 10 is the definitions section. It states "as used in this chapter..." and then lists definitions, including the definition of "domicile" found in Subsection 10 (D).

"The primary concern in interpreting a statute is to determine the intent of the legislature if it reasonably can be discovered in the language when construed in the light of its intended purpose." Clemson Univ. V. Speth, 344 S.C. 310, 312-13, 543 S.E.2d 572, 573 (Ct. App. 2001). In interpreting statutes, the court's "sole function is to determine and, within constitutional limits, give effect to the intention of the legislature, with reference to the meaning of the language used and the

subject matter and purpose of the statute." State v. Hackett, 363 S.C. 177, 182,609 S.E.2d 553, 555 (S.C.App. 2005), citing State v. Cobb, 355 S.C. 98, 101 n.4, 584 S.E.2d 371, 373 n.4 (2003).

A definition from another part of the Code will ordinarily not be incorporated, particularly where there is no legislative intent for such incorporation. See Op. S.C. Atty. Gen., Jan. 2, 2008, citing Speth. "Although one may be legally domiciled in different places for different legal purposes, a person is deemed to have only a single domicile for the particular legal purpose for which the concept is then being used." Wit v. Berman, 306 F.3d 1256 (C.A.2, N.Y., 2002).

Section 59-112-10 defines the term "domicile" in the context of determining tuition rates. The Commission is charged with determining domicile in the context of voter registration, so the definition of domicile in Section 59-112-10 (D) is irrelevant to the Commission's determination. The operative definition of the term "domicile" that the Commission must apply is found in Section 7-1-25.

Conclusion

Domicile is a mixed question of law and fact. As we previously opined, and as the Court stated in Dyer, it is permissible for a registration board to inquire further into an applicant's intent. It is our opinion that when determining the domicile of an applicant, a registration board may utilize a questionnaire, or a set of written guidelines, as long as it is based on the factors outlined in our 1971 opinion and examined in Dyer.

We caution that since constitutional issues of equal protection and the right to vote are at stake, the Commission's policies and procedures should reflect the principle that many factors are to be considered in determining domicile; no one factor is dispositive, and there is no presumption of non-residency for students. While the Symm case does not provide the Commission with its operative definition of the term "domicile," it does caution against a pattern of conduct that abridges voting rights.

The operative definition of the term "domicile" that the Commission must apply is found in S.C. Code Section 7-1-25. The definition of domicile in Section 59-112-10 (D) relates only to college tuition and fees, and is irrelevant to the Commission's determination of domicile for voter registration purposes.

"Generally, this Office recognizes the principle that we will not overrule our prior opinions unless clearly erroneous or unless applicable law has changed." Op. S.C. Atty. Gen., July 27, 2006. We find no change in the law since the issuance of our 2001 opinion. We advise the Commission to follow the principles articulated in Dyer and discussed in our prior opinions. Out-of-state cases may

provide guidance to the Commission only to the extent that they are consistent with the principles articulated in South Carolina law. While heeding the note of caution raised by the Symm case, the Commission should focus on the principles delineated in South Carolina law and the guidelines developed in prior opinions of this Office.

Sincerely,

Henry McMaster
Attorney General

By: Elizabeth H. Smith
Assistant Attorney General

REVIEWED AND APPROVED BY:

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