February 5, 2007

The Honorable Vida O. Miller
Member, House of Representatives
Post Office Box 3157
Pawleys Island, South Carolina 29585

Dear Representative Miller:

We received your request for an opinion of this Office concerning the membership qualifications for the Rural Community Water District of Georgetown County (the "District"). Specifically, you seek an answer to the following three questions:

1. Does the term "area" in section 6-13-30, refer to the "area of district" of the Rural Community Water District as described in Section 6-13-20?

2. Can a person not living in the District area, but who owns property in the District area and is a "user", according to the by-laws, serve as a Board member of the Rural Community Water District?

3. Should the board membership qualifications of the Rural Community Water District of Georgetown County by-laws by amended to conform with Section 6-13-30?

Law/Analysis

Chapter 13 of title 6 of the South Carolina Code contains provisions pertaining to the establishment of rural community water districts. It is our understanding that the District was established pursuant to the predecessor of these provisions passed by the Legislature in 1964. Op. S.C. Atty. Gen., June 4, 1968. Section 6-13-30 of the South Carolina Code (2004), in particular, deals with the establishment of a board of directors of a rural community water district. This section states, in relevant part:

> The district shall be operated and managed by a board of directors to be known as the "_____ Rural Community Water District Board of _____ County" which shall constitute the governing

> body of the district. The board shall consist of five resident electors of the area who shall be appointed by the Governor, upon the recommendation of a majority of the county legislative delegation.

S.C. Code Ann. § 6-13-30 (emphasis added). Section 6-13-20 of the South Carolina Code (2004) provides the procedures for the creation of a rural community water district.

> In order to create a district under the provisions of this article, at least twenty-five owners of real property residing within the boundaries of the proposed district shall file a petition with the governing body of the county which, among other things, shall propose a name for the district. The petition shall set forth a full description of the area of the district. Upon receipt of the petition, the governing body shall call for an election to be held within the area within sixty days . . . .

S.C. Code Ann. § 6-13-20 (emphasis added).

In your first question, you ask whether the term "area" used in reference to the board members to be appointed to a rural community water district is the same as the "area of the district" referred to in section 6-13-20. To answer your question, we refer to the rules of statutory interpretation. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Dreher v. Dreher, 370 S.C. 75, 80, 634 S.E.2d 646, 648 (2006). "Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." Sloan v. South Carolina Bd. of Physical Therapy Examiners, 370 S.C. 452, 468-69, 636 S.E.2d 598, 606-07 (2006). Furthermore, "[i]n construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect, if it can be done by any reasonable construction." Higgins v. State, 307 S.C. 446, 449, 415 S.E.2d 799, 801 (1992).

From reading the provisions contained in chapter 13 of title 6, we gather the Legislature, in creating these provisions, intended to provide a mechanism by which rural community water districts may be created. Section 6-13-20, in describing how a rural community water district is created, requires the county's governing body to specify the area encompassing the district in the petition for the district's creation. After the petition is filed, this provision also requires the electors residing in the area to vote for the creation of the rural community water district.

In enacting section 6-13-30, the Legislature provides for the establishment of a board to govern the district and therefore, presumably to represent the interest of those living in the district. Thus, base on what we believe to be the intent of the Legislature with regard to these provisions and reading the provisions contained in chapter 13 of title 6 together as a whole, we believe the area referred to with regard to the board members is the area in which the district is located and therefore, is the same as the "area of the district" referred to in section 6-13-20.

Next, you ask whether, under the District's bylaws, a person owning property within the District who is a user of the District's services may serve as a member of the District's board. Attached to your request letter, you provided us with a copy of the District's bylaws. With regard to the election of board members, the bylaws state as follows: "The Board of Directors of the 'District' shall consist of five (5) users, all of whom shall be users of the 'District.'" The bylaws do not define the term "user," but indicate this term means those receiving water from the District. Thus, under the bylaws it appears that an individual, such as the one you describe in your letter, would be eligible to serve a member of the District's board of directors.

However, despite our determination that such an individual may serve on the board of directors under the bylaws, we could reach different conclusion under chapter 13 of title 6 of the South Carolina Code. In section 6-13-30, the Legislature specifically states that the board of directors for a rural community water district "shall consist of five resident electors of the area," rather than five users. S.C. Code Ann. § 6-13-30. While chapter 13 of title 6 does not define the term "resident electors," court decisions and past opinions of this Office discuss what is meant by the term "resident" in various contexts.

In 1984, this Office issued an opinion addressing the residency requirement for purposes of registering to vote. Op. S.C. Atty. Gen., April 11, 1984. This opinion summarized the law pertaining to residency as follows:

> Our Supreme Court has stated that for the purpose the voting, 'residence' generally means 'domicile.' Phillips v. S.C. Tax Commission, 195 S.C. 472, 12 S.E.2d 13 (1940). The Court has defined a person's domicile as 'the place where [he] . . . has his true, fixed and permanent home and principal establishment, to which he has, whenever he is absent an intention of returning.' O'Neill's Estate v. Tuomey Hospital, 254 S.C. 578, 176 S.E.2d 527 (1970).
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> 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). A person may have but one domicile at any given time; to change one's domicile, 'there must be an abandonment of, and an intent not to return to the former domicile.' 28 C.J.S., Domicile, § 13. There must also be the clear establishment of a new domicile. Gasque v. Gasque, 246 S.C. 423, 143 S.E.2d 811 (1965). The Supreme Court has emphasized that '[o]ne of the essential elements to constitute a particular place as one's domicile . . . is an intention to remain permanently or for an indefinite time in such

> place.' Barfield v. Coker and Co., 73 S.C. 181, 53 S.E. 170, 171 (1906).

Id.

Based on our understanding of the term "user" as contained in the District's bylaws, we believe an individual could be a user without being a resident elector of the District. For example, if, as you describe, an individual owns a piece of property in the District's area, but does not live on the property, the individual may receive water from the District and thus, is a user. However, such an individual would not qualify as a resident because he does not intend to remain permanently on the property located within the District. Accordingly, the District's bylaws conflict with the legislation under which the District was created. Because state law controls, we believe a court would find the District's bylaws invalid in this respect.

In addition to finding the bylaws in conflict with the general law of the State, we also note our belief that the provision in the bylaws allowing anyone qualifying as a user to serve on the District's board may also run afoul of article VI, section 1 of the South Carolina Constitution (Supp. 2005). This provision states, in pertinent part: "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. In McLure v. McElroy, 211 S.C. 106, 120, 44 S.E.2d 101, 107 (1947) (overruled in part on other grounds by Weaver v. Recreation Dist., 328 S.C. 83, 492 S.E.2d 79 (1997)), our Supreme Court determined the constitutional requirement that all public officers must be qualified electors applies not only to elected officers, but also appointed officers. Section 7-5-120 of the South Carolina Code (Supp. 2005) states the qualifications for electors, which includes a residency requirement. Therefore, in order to serve on the District's board, the Constitution requires an individual to be a resident of the District. Accordingly, we find the District's bylaws conflict with article VI, section 1 of the South Carolina Constitution and are subject to being held invalid by a court for this reason as well.

Thus, we are lead to your final question in which you ask whether the District should amend its bylaws in order to conform to section 6-13-30. Certainly, we recommend the District amend its bylaws to conform to State law. Otherwise, the District's bylaws are subject being held invalid by a court. However, should the District not take action to amend its bylaws, State law and the Constitution continue to control the qualifications of those who may serve on the District's board of directors.

Conclusion

Based on our reading of the provisions contained in chapter 13 of title 6 of the South Carolina Code as a whole and with the intent of the Legislature in mind, we believe that the term "area" referred to in section 6-13-30, pertaining to those who may serve on the District's board of directors, means the area encompassing the District. Thus, we conclude that the term "area" under this

provision refers to "area of the district" referenced in section 6-13-20. Furthermore, we find a person owing property in the District and qualifying as a "user" under the District's bylaws is eligible under the District's bylaws to serve on its board of directors. However, section 6-13-30 of the South Carolina Code and article VI, section 1 of the South Carolina Constitution require members of the District's board to be resident electors of the District. Therefore, unless the user also qualifies as a resident elector, we believe that such an individual would be prohibited under the South Carolina Constitution and State law from serving on the District's board. Finally, because the bylaws conflict with section 6-13-30 and the Constitution with respect to who may serve on the board, we believe a court would find them invalid in this respect. Thus, we would encourage the District to amend its bylaws to conform with the Constitution and the general law of the State.

Very truly yours,

Henry McMaster
Attorney General

By: Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

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Robert D. Cook
Assistant Deputy Attorney General