ALAN WILSON
ATTORNEY GENERAL

April 16, 2013

The Honorable Harvey S. Peeler, Jr.
Senator, District No. 14
P. O. Box 142
Columbia, South Carolina 29202

Dear Senator Peeler:

Attorney General Alan Wilson has referred your letter of April 10, 2013 to the Opinions section for a response. The following is our understanding of your question presented and the opinion of this Office concerning the issue based on that understanding.

Issue: As you state in your letter, "the [Joint Legislative] Committee [to Screen Candidates for College and University Boards of Trustees] has precedence in using the 4% property tax [special legal residence assessment pursuant to S.C. Code Section 12-43-220(c)(2)(ii)] as the criteria to determine residency [of a candidate for a University's Board of Trustees]. If the Committee wanted to use the 4% [special legal residence assessment pursuant to S.C. Code Section 12-43-220(c)(2)(ii)] would we be within the law- or have we operated outside of the law in the past?"

Short Answer: This Office is going to begin with the presumption that the Committee (as an arm of the Legislature) always acts in good faith and within constitutional limits and believes a court would conclude the same. This Office concludes that the Committee possesses broad discretion to determine the residency of candidates nominated, subject to judicial review by the courts.

Law/Analysis:
By way of background, the Medical University of South Carolina is statutorily designated as a State college or university. S.C. Code § 59-101-10 (1976 Code, as amended). It is this Office's understanding that the Joint [Legislative] Committee to Screen Candidates for College and University Boards of Trustees (hereinafter "Committee") was formed pursuant to S.C. Code Section 2-20-10 (1976 Code, as amended). The Committee is authorized to conduct an investigation of each of the candidates "as it considers appropriate and may in the investigation utilize the services of any agency of state government." S.C. Code § 2-20-20. Additionally, the Committee shall hold a public hearing with testimony under oath subject to perjury and false swearing, and the Committee may hold an executive session to interview candidates and others concerning matters pertaining to the candidate's qualifications for the office. S.C. Code § 2-20-30. Any information obtained other than that which is presented at a public hearing must be kept confidential and later destroyed. S.C. Code § 2-20-50. The Committee has the power to administer oaths, take depositions and issue subpoenas in order to facilitate its investigations. S.C. Code § 2-20-60.

This Office has issued numerous opinions on issues relating to residency and domicile in South Carolina.[1] As stated in the previous April 5, 2013 opinion, this Office opined that in order to be elected to any office in South Carolina (including a Board of Trustees member of a state university), one must possess the qualifications of an elector. Op. S.C. Atty. Gen., 2013 WL 1695516 (April 5, 2013) (citing S.C. Const. Art. VI, § 1; S.C. Const. Art. XVII, § 1). The South Carolina Constitution says that "[e]very citizen of the United States and of this State of the age of eighteen and upwards who is properly registered is entitled to vote as provided by law." Id. (citing S.C. Const. Art. II, § 4). The local government in South Carolina is required to register every citizen of the United States if he or she meets the three qualifications set forth in S.C. Code § 7-5-120 and is not disqualified otherwise. That section states:

> (A) Every citizen of this State and the United States who applies for registration must be registered if he meets the following qualifications:
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> (1) meets the age qualification as provided in Section 4, Article II of the Constitution of this State;
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> (2) is not laboring under disabilities named in the Constitution of 1895 of this State; and
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> (3) is a resident in the county and in the polling precinct in which the elector offers to vote.
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> (B) A person is disqualified from being registered or voting if he:
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> (1) is mentally incompetent as adjudicated by a court of competent jurisdiction; or
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> (2) is serving a term of imprisonment resulting from a conviction of a crime; or
>
> (3) is convicted of a felony or offenses against the election laws, unless the disqualification has been removed by service of the sentence, including probation and parole time unless sooner pardoned.

S.C. Code § 7-5-120 (1976 Code, as amended) (emphasis added). The law in South Carolina is clear that a person's residence is his domicile, a person may only have one domicile and that domicile is where a person has the intention of returning whenever he is gone. S.C. Code § 7-1-25 (A) (1976 Code, as

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[1] See Ops. S.C. Atty. Gen., 2009 WL 2844864 (August 27, 2009) (opining that vehicle registration is a factor in determining legal residency but should not be the sole basis for denial of a primary residence reduced rate by a county assessor) (citing Op. S.C. Atty. Gen., 1993 WL 720126 (June 11, 1993) which said "[a] person may have but one domicile at any given time; and 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 clear establishment of a new domicile. Gasque v. Gasque, 246 S.C. 423, 143 S.E.2d 143 811 (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 & Co., 73 S.C. 181, 53 S.E. 170,171 (1906)"); 2009 WL 1968628 (June 12, 2009) (opining that all factors indicating the intent of the taxpayer must be considered in determining domicile, not just the registration of two items of personal property in a different state); 2009 WL 1968603 (June 4, 2009) (opining that a doctor who owned a home, registered his car, his driver's license and his voter registration in the same city as his business and proclaimed that city as his residence was a resident of that same city despite the fact that his wife owned a house at the beach as her primary residence which differed from his city of residence); 1983 WL 181982 (August 29, 1983) (residency is determined by one's intent, and the fact that a board member's wife is a resident of a different county than the board member is "immaterial" to what county the board member is a resident of) (citing 1975-1976 Op. S.C. Atty. Gen. 145 which said a woman living with her husband is not prohibited from establishing her own residency in order to vote in this State in spite of her active duty military husband who declared a different state as his legal residence). Ops. S.C. Atty. Gen., 2006 WL 981694 (March 28, 2006); 2004 WL 736920 (March 17, 2004); 2003 WL 22172231 (September 16, 2003); 2001 WL 1397511 (October 16, 2001); 1999 WL 626635 (July 7, 1999); 1995 WL 803330 (March 8, 1995); 1995 WL 803679 (June 12, 1995); et al.

amended). The law also authorizes a spouse to have a separate domicile for voting purposes. S.C. Code § 7-1-25 (B) (1976 Code, as amended). There are eleven factors to consider someone's intent in order to ascertain their domicile for voting purposes, which are:

> (1) a voter's address reported on income tax returns;
> (2) a voter's real estate interests, including the address for which the legal residence tax assessment ratio is claimed pursuant to Section 12-43-220(C);
> (3) a voter's physical mailing address;
> (4) a voter's address on driver's license or other identification issued by the Department of Motor Vehicles;
> (5) a voter's address on legal and financial documents;
> (6) a voter's address utilized for educational purposes, such as public school assignment and determination of tuition at institutions of higher education;
> (7) a voter's address on an automobile registration;
> (8) a voter's address utilized for membership in clubs and organizations;
> (9) the location of a voter's personal property;
> (10) residence of a voter's parents, spouse, and children; and
> (11) whether a voter temporarily relocated due to medical care for the voter or for a member of the voter's immediate family.

S.C. Code § 7-1-25 (D) (1976 Code, as amended) (emphasis added). As stated in the April 5, 2013 opinion, this Office recognizes a long-standing rule that it will not overrule a prior opinion unless it is clearly erroneous or a change occurred in the applicable law. Ops. S.C. Atty. Gen., 2009 WL 959641 (March 4, 2009); 2006 WL 2849807 (September 29, 2006); 2005 WL 2250210 (September 8, 2005); 1986 WL 289899 (October 3, 1986); 1984 WL 249796 (April 9, 1984).

The courts in South Carolina have also addressed residency issues on a number of occasions. The Clarke v. McCown case is a case where the Supreme Court of South Carolina held that a person's residence is a mixed question of law and fact. The court went on to say that:

> [t]he 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 circumstance; 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....

Clarke v. McCown, 107 S.C. 209, 92 S.E. 479, 480 (1917). That case has been cited in multiple cases, and is still good law today. Id.

This Office has been previously asked to opine on legislative action. In such an instance concerning the Legislature, this Office said:

> any statute enacted by the General Assembly carries with it a heavy presumption of constitutionality. As we have often stated, **any act of the General Assembly is presumed valid as enacted unless and until a court declares it invalid**. Our Supreme Court has often recognized that the powers of the General Assembly are plenary, unlike those of the federal Congress whose powers are enumerated. State ex rel. Thompson v. Seigler, 230 S.C. 115, 94, S.E.2d 231, 233 (1956). Accordingly, any act of the General Assembly must be presumed valid and constitutional. An act will not be considered void unless its unconstitutionality is clear beyond any reasonable doubt. Thomas v. Macklen, 186 S.C. 290, 195 S.E. 539 (1937); Townsend v. Richland Co., 190 S.C. 270, 2 S.E.2d 779 (1939).
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> Moreover, only a court and not this Office, may strike down an act of the General Assembly as inequitable or unconstitutional. While this Office may comment upon what we deem an apparent constitutional defect, we may not declare the Act void. Put another way, a duly enacted statute "must continue to be followed until a court declares otherwise."

Op. S.C. Atty. Gen., 2006 WL 269605 (January 12, 2006) (citing Ops. S.C. Atty. Gen., 2005 WL 1383357 (May 2, 2005); 1997 WL 419880 (June 11, 1997)) (emphasis added). See also Ops. S.C. Atty. Gen., 2003 WL 21040132 (February 18, 2003); 2003 WL 21108488 (May 6, 2003); 2003 WL 21043491 (April 29, 2003); 2003 WL 21040138 (March 4, 2003). **Therefore, this Office is going to begin with the presumption that the Committee (as an arm of the Legislature) always acts in good faith and within constitutional limits, even if the result of any previous action may have inadvertently resulted in some inequality.** Op. S.C. Atty. Gen., 2003 WL 211108488 (May 6, 2003) (citing Scroggie v. Scarborough, 162 S.C. 218, 160 S.E. 596, 601 (1931); State v. Solomon, 245 S.C. 550, 572, 141 S.E.2d 818 (1965)); see State v. McGrier, 378 S.C. 320, 663 S.E.2d 15 (2008). **This Office believes a court would interpret previous action by the Committee as done in good faith and within constitutional limits.** See State v. Solomon, 245 S.C. 550, 572, 141 S.E.2d 818, 830 (1965).

It is this Office's understanding there is no issue concerning residency where the candidate files for the 4% special assessment rate pursuant to S.C. Code Section 12-43-220(c)(2)(ii) because the candidate would have to certify that location is their residency. The issue arises (as the facts were presented in the April 5, 2013 opinion) when a candidate does not file for the 4% special assessment rate pursuant to S.C. Code Section 12-43-220(c)(2)(ii) but his spouse files her residence to receive the 4% special assessment rate in a different county in South Carolina than he files as a resident. Let us further examine where the South Carolina Code of Laws discusses the 4% special assessment residence. South Carolina Code of Laws Section 12-43-220(c)(2)(ii), (iii) (1976 Code, as amended) provides that:

> (ii) the owner...shall certify to the following statement: "Under penalty of perjury I certify that:
>
> (A) the residence which is the subject of this application is my legal residence and where I am domiciled at the time of this application and that neither I, nor any member of my household, claim to be a legal resident of a jurisdiction other than South Carolina for any purpose; and
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> (B) that neither I, nor a member of my household, claim the special assessment ratio allowed by this section on another residence."
>
> (iii) For purposes of subitem (ii)(B) of this item, "a member of my household" means:
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> (A) the owner-occupant's spouse, except when that spouse is legally separated from the owner-occupant; and

> (B) any child under the age of eighteen years of the owner-occupant claimed or eligible to be claimed as a dependent on the owner-occupant's federal income tax return.

Based on a plain reading of the statute, it appears that any such certification by the spouse of a candidate of a legal residence could be truthful and could still be consistent with a candidate having a residence in a different county. The candidate would be a member of the household of his spouse pursuant to S.C. Code Section 12-43-220(c)(2)(iii). As long as the candidate doesn't claim the 4% rate when the spouse does (pursuant to S.C. Code Section 12-43-220(c)(2)(ii)(B)), as long as the spouse and the candidate are both legal residents where they claim to be and are both are residents in South Carolina (pursuant to S.C. Code Section 12-43-220(c)(2)(ii)(A)), then they may be in compliance with the law while claiming separate residencies.

In regards to your question of whether or not the Committee would be within the law by requiring where a candidate or his spouse files for the 4% special assessment rate pursuant to S.C. Code Section 12-43-220(c)(2)(ii) to be the candidate's residency, **the Committee possesses broad discretion in its determination of residence with respect to its nominations of candidates**. S.C. Code §§ 2-20-10, -20. **However, any such requirements and action by the Committee would, of course, be subject to judicial review**. It is the opinion of this Office that the law says if someone is a qualified elector, they are eligible to hold an office pursuant to the South Carolina Constitution Article VI, § 1 and Article XVII, § 1. Their residency (and thus domicile) may be in full compliance with the law, even if it is different from their spouse. Op. S.C. Atty. Gen., 2013 WL 1695516 (April 5, 2013) (citing S.C. Code § 7-1-25 (B)); 2009 WL 1968603 (June 4, 2009); 1983 WL 181982 (August 29, 1983). A candidate who is a valid elector is eligible for office. S.C. Const. Art. VI, § 1; Art. XVII, § 1. However, any further screenings and investigations are left in the discretion of the Committee. S.C. Code §§ 2-20-10, -20.

Conclusion: This opinion is merely meant to offer guidance and this Office's interpretation of the law without violating the separation of powers. This Office is only issuing a legal opinion. Until a court or the legislature specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. If it is later determined otherwise or if you have any additional questions or issues, please let us know.

Sincerely,

Anita S. Fair

Anita Smith Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
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