

## The State of South Carolina



## Office of the Attorney General

T. TRAVIS MEDLOCK  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S.C. 29211  
TELEPHONE: 803-734-3680  
FACSIMILE: 803-253-6283

June 11, 1993

The Honorable John R. Justice  
Solicitor, Sixth Judicial Circuit  
Post Office Box 728  
Chester, South Carolina 29706

Dear Solicitor Justice:

Attorney General Medlock has referred your recent letter to me for reply. You have stated that the winner of one of the Chester County School Board of Trustees' single member seats no longer resides in the district from which he ran and was elected. You have inquired what occurs when the person elected no longer resides in the single member district from which he was elected.

For the purpose of voting, "residence" generally means "domicile." Phillips v. S.C. Tax Commission, 195 S.C. 472, 12 S.E.2d 13 (1940). The South Carolina Supreme 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). 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; 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 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).

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This Office is not a finder of facts. Therefore, for purposes of this letter we will assume the facts to be as they have been presented to you.

Elections for the Chester County School Board of Trustees appear to be governed by Act 525 of 1982. This law establishes single member districts and provides for the implementation of the new plan by staggered terms. The Act provides in part in Section 4(a) that

[o]ne ... member shall be elected in 1982 from each of the defined single-member election districts established pursuant to Section 1 of this act in which the present members whose terms expire in 1982 now reside and their successors shall then be elected in the general election every four years thereafter from such election districts.

The law, therefore, requires a candidate to reside in the single member district. The requirement that an officeholder be a resident of the area he represents is one that continues throughout the entire term of that officeholder. 67 C.J.S. Officers §18. If the individual is no longer residing in the area that he represents, he is no longer qualified to hold the office. This office has held in several opinions that an individual who no longer resides in his district would nonetheless continue to serve until such time as his successor has been selected and qualified. CF., Bradford v. Byrnes, 221 S.C. 255, 70 S.E.2d 228 (1952).

The filling of vacancies for the Chester County School Board of Trustees appears to be governed by Section 5 of Act 525 of 1982 which provides for an election to fill the unexpired portion of the term.<sup>1</sup> However, as the filling of vacancies is governed by local law we would refer the question of the exact procedure for filling the vacancy to the local school board attorney.

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<sup>1</sup> This Section governs the selection of the one at large member of the Board and contains the only reference to the filling of vacancies. This Section, however, would apparently also govern the filling of single member seat vacancies.

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I am also enclosing with this letter prior opinions on the issue of the continuing requirement of residency which should more fully answer your question. If I can be of any further assistance, please advise me.

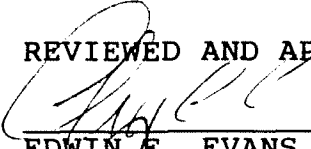
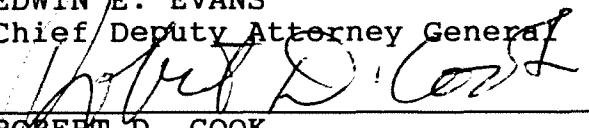
Very truly yours,



Treva G. Ashworth  
Senior Assistant Attorney General

TGA:bvc  
Enclosures

REVIEWED AND APPROVED BY:

  
\_\_\_\_\_  
EDWIN E. EVANS  
Chief Deputy Attorney General  
\_\_\_\_\_  
ROBERT D. COOK  
Executive Assistant for Opinions