

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. 29211-1549
TELEPHONE: 803-734-3970
FACSIMILE: 803-253-6283

March 8, 1995

The Honorable Marion P. Carnell
Member, House of Representatives
522-B Blatt Building
Columbia, South Carolina 29211

RE: Informal Opinion

Dear Representative Carnell:

By your letter of February 16, 1995, to Attorney General Condon, you have inquired as to whether an individual could live in Newberry County and at the same time vote or hold office in Laurens County. As the facts have been presented to this Office, allegedly an individual lives in Newberry County, which is alleged to be his primary residence which he calls home, and he is said to own property in Laurens County, having a farm office with a Laurens County address. He is said to be registered to vote in Laurens County.

Any opinion of the Office of the Attorney General, whether formal or informal, is restricted to an analysis of the law applicable to the issue at hand. The Office of the Attorney General has not been granted the authority to make findings of fact, Op. Att'y Gen. dated December 12, 1983, and thus the necessary findings of fact must be left to the appropriate trier of fact (a court, voter registration board, or other fact-finding entity). This Office will assume the facts contained in your request to be accurate for purposes of preparing this response.

To be a public officer, one must possess the qualifications of an elector, pursuant to Article VI, Section 1 of the Constitution of the State of South Carolina. The qualifications one must meet to be an elector are specified in S.C. Code Ann. §7-5-120, as most recently amended by Act No. 365 of 1994. Subsection (A)(1) requires the potential elector to be "a resident in the county and in the polling precinct in which the

The Honorable Marion P. Carnell
Page 2
March 8, 1995

elector offers to vote." The issue to be decided, then, is what constitutes residency for purposes of registering to vote and being qualified to hold public office.

In Clarke v. McCown, 107 S.C. 209, 92 S.E. 479 (1917), certain votes in an annexation election were challenged on the basis that those persons casting the challenged votes were not residents of the area to be annexed. The Supreme Court addressed the issue of residency:

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, as was the evidence in this case with reference to some of the voters whose votes were held to be illegal.

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. at 213-24.

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. . . ." Op. Att'y Gen. dated May 5, 1958, 1957-58 Ops. Att'y Gen. 141. This Office has opined that "[t]he permanent residence of an elector is not affected by a temporary absence when the intention of such absence is not to be permanent." 1964-65 Op. Att'y Gen. 15. Accord, Ravenel v. Dekle, 265 S.C. 364, 378, 218 S.E.2d 521 (1975). As previously stated, the question of residence depends on the individual's intent, and such is a question of fact.

This Office does not have a sufficient factual basis to determine the legal residence of the individual in question. To show the various factors which have been considered previously in determining the issue of one's residence, I am enclosing a copy of a

The Honorable Marion P. Carnell

Page 3

March 8, 1995

previously issued opinion of this Office dated August 29, 1983, as well as a copy of an Order of the State Board of Canvassers dated December 5, 1984 (In Re Appeal of Kleckley).

The foregoing is as responsive to your inquiry as is possible, given that a sufficient factual basis does not exist to permit a conclusion to be drawn as to the individual's residency. If I may provide additional assistance or clarification, please do not hesitate to let me know.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

Enclosures