



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

September 14, 1995

The Honorable Greg Smith
Senator, District No. 34
Post Office Box 1231
Pawleys Island, South Carolina 29585

RE: Informal Opinion

Dear Senator Smith:

By your letter of September 6, 1995, to Attorney General Condon, referencing an earlier letter of June 27, 1995, which we have been unable to locate, you sought an opinion as to the meaning of the phrase "resident freeholder" as used in S.C. Code Ann. §§5-3-240 and 5-3-280 (1976 & 1994 Cum. Supp.). Your request observes that the term "resident" is not defined therein; a constituent has questioned whether the term "resident" requires a freeholder to be a full time, permanent resident, or whether periodic or part time residency would comply with the terms of the statutes.

Section 5-3-280

Section 5-3-280 provides a means whereby the corporate limits of a municipality may be reduced. That section provides:

Whenever a petition is presented to a city or town council signed by a majority of the resident freeholders of the city or town asking for a reduction of the corporate limits of the city or town, the council shall order an election after not less than ten days' public advertisement. Such advertisement shall describe the territory that is proposed to be cut off. If a majority of the qualified electors vote at such election in favor of the release of the territory, then the council shall issue an ordinance declaring the territory no longer a portion of the city or town and shall so notify the

Secretary of State, furnishing him at the same time with the new boundaries of the town. [Emphasis added.]

Section 5-3-240

The term "freeholder" is defined for certain purposes by §5-3-240. That statute now provides:

For the purposes of §§5-3-20, 5-3-50, and 5-3-160 to 5-3-240, a "freeholder" is defined as any person eighteen years of age, or older, and any firm or corporation who or which owns legal title to a present possessory interest in real estate equal to a life estate or greater (expressly excluding leaseholds, easements, equitable interests, inchoate rights, dower rights and future interests) and who owns, at the date of the petition or of the referendum, at least an undivided one-tenth interest in a single tract and whose name appears on the county tax records as an owner of real estate.

It is not certain that a court would apply the definition of "freeholder" in §5-3-240 to the procedure in §5-3-280, as the latter statute is not mentioned within the former statute ("For the purposes of §§5-3-20, 5-3-50, and 5-3-160 to 5-3-240...."). A court could, however, consider the two statutes in pari materia and read them together, Fishburne v. Fishburne, 171 S.C. 408, 172 S.E. 426 (1934), since both are a part of the statutory scheme to alter the boundaries of a municipality, by either adding to or diminishing the corporate limits. That being the case, the concept of residency must still be examined.

One of the classic statements as to residency by our Supreme Court is found in Clarke v. McCown, 107 S.C. 209, 92 S.E. 479 (1917):

The residence of a person is a mixed question of fact and law; 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 right 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. ...

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, and when they are opposed by his oath, and that is corroborated by indisputable circumstances, ... showing that it was not his intention to change his residence, the facts and circumstances stated become legally insufficient as evidence upon which he may be deprived of the rights to which he is entitled by reason of the residence gained.

107 S.C. 213-214.

As to residency of an individual, this Office has similarly examined such in two lengthy opinions, copies of which are enclosed. Particularly helpful is the research and reasoning in Op. Att'y Gen. No. 84-41:

Our Supreme Court has stated that for the purpose of voting "residence" generally means "domicile." [Cite omitted.] 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." [Cite omitted.]

Intent "is a most important element in determining the domicile of any individual." [Cite omitted.] Intent is primarily an issue of fact, determined on a case by case basis. [Cite omitted.] 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. [Cite omitted.] There must also be the clear establishment of a new domicile. [Cite omitted.] 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. [Cite omitted.] [Emphasis added.]

It is clear from the citations of authority in the enclosed opinion that an individual may have only one residence or domicile at a given point in time. I am of the opinion that a "part time residency" would be a contradiction in terms, based on the authorities cited in Op. Att'y Gen. No. 84-41. Based on the foregoing, I am of the opinion that the term "resident" connotes an individual who has established a domicile in a particular place with the intention to remain there permanently or at least for an indefinite period of time; certainly one may be absent from the residence periodically, but the residence would be the permanent place to which one intends to return when he is absent therefrom.

In stating my opinion in the preceding paragraph, I am mindful that a number of persons own cottages, condominiums, or other forms of shelter in your area of the state,

The Honorable Greg Smith

Page 4

September 14, 1995

in addition to homes which they may also own in other parts of this State or other states. To determine whether such persons would actually be considered residents of your area of the state would require inquiry on a case by case basis; such will turn on the intent of each individual. The two opinions enclosed herewith will offer guidance on a number of factors which courts have considered in determining the issue of residency.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion. I trust that it has satisfactorily responded to your inquiry and that you will advise if clarification or additional assistance should be necessary.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General

Enclosures