

The State of South Carolina



Office of the Attorney General

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May 20, 1993

The Honorable Marion Burnside
Chairman, South Carolina Wildlife
& Marine Resources Commission
7071 Bluff Road
Hopkins, South Carolina 29061

Dear Mr. Burnside:

In a letter to this Office you questioned the constitutionality of the requirement set forth in S.C. Code Ann. Section 50-3-316 that mandates residency within a particular county when hiring conservation officers for that county. Such provision requires that the State Wildlife and Marine Resources Commission

... when employing conservation officers within a particular county, must hire those applicants, if any, who meet the ... (established) ... minimum employment qualification requirements ... and who reside within that particular county before the Department may hire other qualified applicants who reside outside that county.

If no candidates of a particular county meet the minimum requirements, the top candidate, regardless of county of residence, will be employed. It is our understanding that typically when a conservation officer is hired from a particular county, he remains in that county.

It is generally recognized that residency may be a qualification for employment or appointment to a public office. McCarthy v. Philadelphia Civil Service Commission, 424 U.S. 645 (1976); Detroit Police Officers Assn. v. City of Detroit, 190 N.W.2d 97 (Mich. 1971). However, it is also stated

... where a statute containing a residency requirement for public employment creates an arbitrary classification without

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rational relation to a public employee applicant's capabilities of performing satisfactorily for the state and operates irrationally without reference to any legitimate state interest, it is unconstitutional.

67 C.J.S. Officers Section 26, p. 276. See also: Grace v. City of Detroit, 760 F.Supp. 646 (E.D. Mich. 1991) (In construing a municipal residency requirement for city workers the Court stated "(u)nder the rational basis test, the city only need show that its rules bear a rational relationship to a legitimate governmental interest." 760 F.Supp. at 650.

Pursuant to S.C. Code Ann. Section 50-3-340, State conservation officers have Statewide-authority to enforce fish and game laws. Inasmuch as these officers' jurisdiction is statewide, there does not appear to be a rational basis for restricting the hiring of conservation officers for a particular county to residents of that county. Therefore, the constitutionality of Section 50-3-316 is questionable.

With kind regards, I am

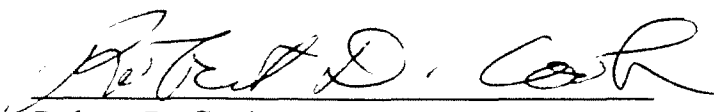
Very truly yours,



Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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