



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

June 12, 1995

The Honorable W. Jeffrey Young
Member, House of Representatives
988 Heather Lane
Sumter, South Carolina 29154

RE: Informal Opinion

Dear Representative Young:

By your letter of May 24, 1995, to Attorney General Condon, you have sought an opinion as to whether, pursuant to Act No. 595 of 1980 or any subsequent amendments thereto, a non-resident of Clarendon County, South Carolina, may serve on the Clarendon County Hospital District Board of Trustees.

Act No. 595 of 1980 provides in relevant part as to the Clarendon County Hospital District Board of Trustees:

The Clarendon Hospital District shall be governed by a board of nine members to be known as the Clarendon Hospital District Board of Trustees. The members of the board shall be residents of the county, eight of whom shall be appointed by the governing body of the county. One of the appointed members shall be a licensed physician. The chief of the medical staff of the Clarendon Memorial Hospital shall be a member, ex officio, without voting privileges. The terms of members shall be for five years and until their successors are appointed and qualify. Vacancies shall be filled in the manner of the original appointment for the unexpired portion of the term only. The board shall elect a chairman, a vice-chairman, a secretary and such other officers as it deems necessary. ...

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The plain language of the legislative act requires that the members of the Clarendon Hospital District Board of Trustees be residents of Clarendon County. Use of the term "shall" connotes mandatory compliance with the terms of the enactment. South Carolina Dep't of Highways and Public Transportation v. Dickinson, 288 S.C. 189, 341 S.E.2d 134 (1986). To conclude that a non-resident of Clarendon County could serve on this board would be to ignore the plain language of the legislative act and the meaning of the term "shall."

Such a conclusion would be in accordance with the general law on the subject of residency and the qualification to hold public office. Article XVII, Section 1 of the South Carolina Constitution provides in relevant part that "[n]o person shall be elected or appointed to any office in this State unless he possess the qualifications of an elector." The phrase "qualified elector" means "registered elector," and no one who has not been registered to vote (and has thus met the requirements to be a qualified elector) can hold a public office, elected or appointed. Mew v. Charleston & Savannah Ry. Co., 55 S.C. 90, 32 S.E. 828 (1899); Blalock v. Johnston, 180 S.C. 40, 185 S.E. 51 (1936). Article II, Section 4 of the state Constitution provides in relevant part that "[e]very citizen of the United States and of this State of the age of eighteen and upwards who is properly registered shall be entitled to vote in the precinct of his residence and not elsewhere." Qualifications to be met to be a registered elector are found in S.C. Code Ann. §7-5-120 and provide in part that

(A) Every citizen of this State and the United States who applies for registration must be registered if he meets the following qualifications:

....

(3) is a resident in the county and in the polling precinct in which the elector offers to vote.

....

Thus, the question becomes what constitutes residency in South Carolina.

"Residence" for suffrage purposes means "domicile" in South Carolina. Phillips v. South Carolina Tax Commission, 195 S.C. 472, 12 S.E.2d 13 (1940); Clarke v. McCown, 107 S.C. 209, 92 S.E. 479 (1917). One's domicile is "the place where a person 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, 583-584, 176 S.E.2d 527 (1970). An intention to remain permanently, or for an indefinite time, in a place is one of the essential elements of domicile. Barfield v. Coker & Co., 73 S.C. 181, 53 S.E. 170 (1906). Intent of the individual is probably the most important element in determining the residency of an individual. Ravenel v. Dekle,

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265 S.C. 364, 218 S.E.2d 521 (1974). Intent is primarily a question of fact, determined on a case by case basis.

In Clarke v. McCown, supra, the South Carolina Supreme Court considered the issue of residency in these terms:

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. ..

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 213-214. That an individual is a qualified elector of a particular county would be determined by that county's board of voter registration.

Applying the foregoing to the question which you have raised, I am of the opinion that an individual must demonstrate that he is qualified, by virtue of his residence in Clarendon County, to be an elector of Clarendon County to be eligible to serve on the Clarendon Hospital District Board of Trustees.

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 is satisfactorily responsive to your inquiry and that you will advise if clarification or additional assistance should be needed.

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With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General