

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: 803-734-3970
FACSIMILE: 803-253-6283

May 7, 1991

The Honorable Danny M. Bruce
Member, House of Representatives
402-D Blatt Building
Columbia, South Carolina 29211

Dear Representative Bruce:

By your letter of April 16, 1991, you have requested our opinion as to whether a person residing outside the New Prospect Area Fire District, but owning land in the district, may be appointed to the Board of Fire Control for the district. Stated another way, must a person owning land in the fire district also be a resident of the district in order to be appointed to the Board of Fire Control of the district?

The New Prospect Area Fire District was created by Act No. 908 of 1964 and a favorable referendum as authorized by that act. Membership on the Board of Fire Control is governed by § 4 of that act; the Board is to be composed of "five members who shall be appointed by the Governor upon the recommendation of a majority of the Spartanburg County Legislative Delegation" This provision is silent as to any qualification as to residence of appointees.

Article XVII, § 1 of the State Constitution provides that "[n]o person shall be elected or appointed to any office in this State unless he possess the qualifications of an elector" Where a residency requirement has not been specified by the legislature, such may be necessarily implied, to prevent circumvention of the Constitution. McLure v. McElroy, 211 S.C. 106, 44 S.E.2d 101 (1947). See Ops. Atty. Gen. dated April 16, 1982, August 1, 1985; August 27, 1985; October 4, 1984; December 19, 1980; and January 14, 1981. A member of the Board of Fire Control of the New

The Honorable Danny M. Bruce
Page 2
May 7, 1991

Prospect Area Fire District would be considered to be an office-holder 1/ and thus would be required to be an elector within the district, by implication.

To be qualified as an elector, one must meet the requirements specified in §7-5-120, S.C. Code Ann. (1990 Cum. Supp.); one of those requirements is that the individual be "a resident in the county and in the polling precinct in which the elector offers to vote." Merely owning property within the district without residing therein would not be sufficient to qualify one as an elector of that district. Where one is domiciled or resides is a mixed question of fact and law and turns on the individual's intent, Clarke v. McCown, 107 S.C. 209, 92 S.E. 479 (1917); residence or domicile and not ownership of property is the operative question, however.

Based on the foregoing, due to the (implied) constitutional requirement that one be a qualified elector of a district to be an office-holder in a given district (here, the Board of Fire Control of the New Prospect Area Fire District), it is our opinion that a member of the Board of Fire Control most probably must be an elector in the district rather than merely owning property therein.

With kindest regards, I am

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions

1/ The Board of Fire Control is created by Act No. 908 of 1964. The members are appointed by the Governor upon recommendation of a majority of the Spartanburg County Legislative Delegation for terms of six years or until their successors are appointed and qualify. Duties to be exercised by the Board are specified in § 5 of that act. Members of the Board are to serve without pay. No oath is required by the act but is likely required in the commissioning process upon appointment by the Governor. The duties in § 5 appear to involve an exercise of sovereign power. Thus, the conclusion that a board member would hold an office is reached. See Sanders v. Belue, 78 S.C. 171, 58 S.E. 762 (1907) and State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980); Article XVII, § 1A of the State Constitution.