

# The State of South Carolina



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February 4, 1992

The Honorable Glenn G. Reese  
Senator, District No. 11  
510 Gressette Building  
Columbia, South Carolina 29202

Dear Senator Reese:

In a telephone call you questioned whether an individual appointed as a Spartanburg County magistrate must reside within the magisterial district for which he is appointed.

Article V, Section 26 of the State Constitution and Section 22-1-10 of the Code provide for the appointment of magistrates in each county. Such provisions do not specifically provide for residency requirements of magistrates. A prior opinion of this Office dated January 14, 1981, a copy of which is enclosed, stated that all officers, constitutional or statutory, appointed or elected, must be qualified electors. That opinion also cited other prior opinions of this Office which indicated that a magistrate must be a qualified elector of a county to be appointed magistrate for that county. Consistent with such, an individual must be a qualified elector of Spartanburg County to be appointed magistrate for that County.

I am unaware of any other statutory requirements which would require residency within a particular magisterial district of Spartanburg County. This Office has in prior opinions recognized that special legislation for certain counties does require district residency for magistrates in those counties. See, e.g. Atty. Gen. Ops. dated April 16, 1980 (Lancaster County); May 21, 1979 (Chester County). Based upon my review I am unaware of any such district residency requirements for Spartanburg County magistrates. A

The Honorable Glenn G. Reese  
Page 2  
February 4, 1992

provision codified in the 1962 Code as Section 43-1012 did require

Each person seeking appointment as a magistrate shall be a resident qualified elector of the district where he is a candidate and shall qualify under the rules prescribed by law.

However inasmuch as advisory elections for magistrates are now prohibited pursuant to the decision of the State Supreme Court in State ex rel. Riley v. Pechilis, 273 S.C. 628, 258 S.E.2d 433 (1979), it appears that the referenced provision is no longer effective. As a result, it appears that there are no district residency requirements for magistrates in Spartanburg County. However, as noted, they must continue to be qualified electors of that County.

With kind regards, I am

Very truly yours,



Charles H. Richardson  
Assistant Attorney General

CHR/an  
Enclosure

REVIEWED AND APPROVED BY:



Robert D. Cook  
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