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# The State of South Carolina



## Office of the Attorney General

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August 30, 1989

The Honorable Donald H. Holland  
Senator, District No. 27  
Drawer 39  
Camden, South Carolina 29020

Dear Senator Holland:

Attorney General Medlock has referred your recent letter to me for reply. You have enclosed a draft of a piece of legislation that may be proposed in the next legislative session and have inquired if the statute is constitutional and if it would be useful. You have stated that the proposed legislation had been drafted in an effort "...to ensure that voter registration is uniform with regards to students. As ...some students are allowed to register in the county of their school's location while others are not." You further state that you hope this legislation will "remove the discretion being exercised across the State."

The proposed bill would amend Section 7-5-120 (3) and 7-5-170 (4) of the Code to require a person to actually declare himself to be a resident of the county and polling precinct where he seeks to register to vote. I see several potential problems with this proposed bill.

The proposed language amending Section 7-5-120 (3) would appear to take all discretion from the Boards of Registration as to whether or not a person should be registered to vote. By reading together all of Section 7-5-120 which sets out the qualifications for registration, including the proposed amendments to 7-5-120(3) the statute would provide that if the person seeking to be registered to vote is eighteen, not disqualified by the Constitution and declares himself to be a resident when he applies for registration he "...must be registered ..." provided he is not in prison, mentally incompetent or been convicted of a felony or election law offense. (Emphasis added.) These provisions appear to conflict

The Honorable Donald H. Holland  
August 30, 1989  
Page Two

with Section 7-5-170 which, even after the amendment, would still authorize the Registration Board to exercise discretion on whether or not the applicant was qualified.

This statutory conflict could be easily resolved and in light of your stated purpose for the bill, would apparently be resolved in favor of deleting the Board's discretion. You have stated that the purpose of the bill is to take the discretion out of the hands of the Registration Board, as to whether or not a person actually resides in an area. This would apparently be accomplished by vesting that power solely in the elector and the statements he chooses to make about his residency. This may present a problem.

Article II, Section 4 of the South Carolina Constitution provides in 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... . (Emphasis added.)

The Constitution envisions that persons will only be able to vote in the precinct where they actually reside. The proposed bill would take any discretion from registration officials as to determining this question and would require them to register any person who declares he is a resident. In actual operation this could be required even if the board knows for a fact the person seeking to register is making a false statement. The ultimate effect would be to allow persons to declare themselves residents in any area, even areas where they clearly do not reside, which would, of course if carried to that extreme, contravene the intent of the Constitution.

The general law regarding this question is set out in 29 C.J.S., Elections, §19, p. 71-72 where it is stated that

[a]n elector's statements, declarations, or testimony with respect to his intention is not controlling, but must be taken in connection with his acts and conduct. The best evidence of intention to establish a voting residence ordinarily comes from the acts of the person rather than from his declarations.

The Honorable Donald H. Holland  
August 30, 1989  
Page Three

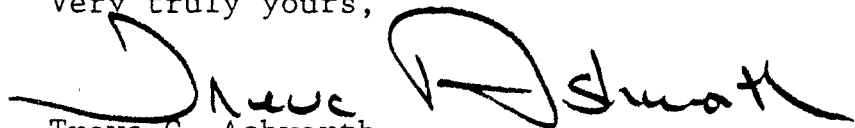
In South Carolina the Supreme Court held that

...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 the decision.

Clarke v. McCown, 107 S.C. 209, 92 S.E. 479 (1917).

It would, therefore, appear that the proposed bill while solving some problems as to a perceived lack of uniformity could very well create new ones and by operation could possibly violate the intent of the South Carolina Constitution.

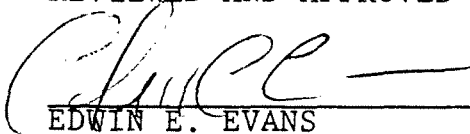
Very truly yours,



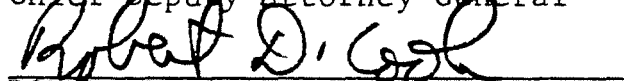
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