

The State of South Carolina



Office of the Attorney General

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September 5, 1989

The Honorable Lucille S. Whipper
Member, House of Representatives
Box 268
Mt. Pleasant, South Carolina 29465

Dear Representative Whipper:

Attorney General Medlock has referred your letter to me for reply. You have stated that a city councilman has been accused of not living in the area he was elected to represent. You have asked the following questions regarding residency:

1. The law as it pertains to residency.

There is no specific law that states how residency is established. As was noted in the case of Clarke v. McCown, 107 S.C. 209, 92 S.E. 479 (1917):

[t]he 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, supra, p. 213.

In a 1971 opinion issued by this Office, Robert Brown set out various factors that may be considered by a Board in determining whether or not a person actually resides in an area. A copy of this opinion is enclosed. As each assertion of residency must be determined on a case by case basis, Mr. Brown's opinion does not constitute an exhaustive listing of criteria that could be considered.

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2. Definitions or interpretations, if any, of the term "reside". What are valid evidences that one legally resides at a designated home?

"Reside" is defined in Black's Law Dictionary, Fifth Edition, as to

[l]ive, dwell, abide, sojourn, stay, remain, lodge. Western-Knapp Engineering Co v. Gilbank, C.C.A. Cal., 129 F.2d 135, 136. To settle oneself or a thing in a place, to be stationed, to remain or stay, to dwell permanently or continuously, to have a settled abode for a time, to have one's residence or domicile; specifically, to be in a residence, to have an abiding place, to be present as an element, to inhere as a quality, to be vested as a right. State ex rel. Bowden v. Jensen, Mo., 359 S.W.2d 343, 349.

I am enclosing a copy of pages 1176 and 1177 of Black's Law Dictionary which sets out not only the definition for "reside" but "residence", which also has a sub-part distinguishing "domicile", "residency requirements", "resident", and "resident freeholder". Research did not disclose a South Carolina case that defined "reside", however, the term "resident" has been defined in the South Carolina case of Easler v. Blackwell, 195 S.C. 15, 10 S.E.2d 160 (1940) as

... 'one who has residence', as distinguished from one who has a place of business, or a place where he earns his living; as 'one who abides, or dwells, or lives', in a particular place, as distinguished from one who merely 'works' in a certain locality, or in a certain place of business; and that one is a resident of that place where he makes his home, rather than of the place where he makes

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his living, or works when his home and his place of work are in different localities; and it is the opinion of the writer hereof that when the General Assembly limited the right to vote for trustees of Saxon School District to the 'qualified resident electors of said district', the intention was to limit such right of suffrage to those 'qualified electors' only who were 'residents' of such district; who made their homes within such district, who had their residences there, as distinguished from their places of business, who abided there, who dwelled there, who lived there, as distinguished from those who merely worked within the district, who only earned their livelihood there.

Easler, supra, p. 22.

I am enclosing copies of the definitions provided in Words and Phrases, "Reside" as to what would constitute valid evidences that one legally resides in a specific area. See also Robert Brown's opinion, cited above.

3. Are there court cases within this state or elsewhere which deal with this issue? On what point was the Charles "Pug" Ravenel candidacy for Governor decided?

There are many cases and Attorney General opinions over the years that have discussed this issue. The question of residency does not always come up in the context of elections, but may arise in such issues as taxation, residency for persons serving in the armed forces, etc. See, Ferguson v. Employers Mut. Cas. Co., 254 S.C. 235, 174 S.E.2d 768 (1970); Ferrara v. Ibach, 285 F. Supp. 1017 (D.C. S.C. 1968). I am enclosing copies of the two South Carolina cases I have cited, Easler and Clarke which deal with this question.

The case involving Mr. Ravenel was a question regarding whether or not Mr. Ravenel had met the constitutional requirements that a person must have been a resident and citizen of this State for five years in order to be qualified for the Office of Governor. South Carolina Constitution Article IV,

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Section 2. The Court discussed in that opinion, the differences between citizenship and residency. A copy of this case is enclosed.

4. Do you have any recommendations for tightening the law?

As the determination of what is a resident is by its nature one that must be decided case by case, any tightening of the law or expressly stating what will or will not constitute "residency" would probably be a difficult task to accomplish. It would also probably create new and additional problems by trying to establish guidelines that would cover all conceivable situations which would more than likely be an impossible task.


Very truly yours,

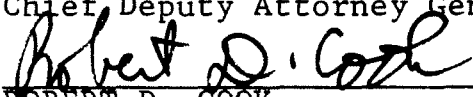

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Enclosures

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