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# The State of South Carolina



Opinion 15-16

## Office of the Attorney General

T. TRAVIS MEDLOCK  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S.C. 29211  
TELEPHONE 803-758-3970

August 1, 1985

Ms. Judith S. Burk  
Assistant City Attorney  
City of Greenville  
Post Office Box 2207  
Greenville, South Carolina 29602

Dear Ms. Burk:

By your letter of June 26, 1985, to Attorney General Medlock, you have requested an opinion of this Office as to the power of a mayor to remove from office a housing authority commissioner who has moved out of the city limits. This Office has received memoranda on the question from both the City Attorney's office and the attorney for the Housing Authority of the City of Greenville. This Office concurs with the conclusion reached in the memorandum of the City Attorney dated July 19, 1985, as discussed more fully below.

The Housing Authority of the City of Greenville was created pursuant to Section 31-3-310 et seq., Code of Laws of South Carolina (1976). Commissioners are appointed pursuant to Section 31-3-340 of the Code. Removal of commissioners may be accomplished pursuant to the terms of Section 31-3-370, which provides:

For inefficiency, neglect of duty or misconduct in office a commissioner of an authority may be removed by the mayor, but a commissioner shall be removed only after he shall have been given a copy of the charges at least ten days prior to the hearing thereon and had an opportunity to be heard in person or by counsel. In the event of the removal of any commissioner a record of the proceedings, together with the charges and findings thereon, shall be filed in the

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office of the clerk of the circuit court of the county in which the city is located, in the office of the Secretary of State and in the office of the Board.

As we understand the situation in Greenville, a commissioner formerly residing in the City of Greenville moved out of the city limits to the City of Simpsonville. Subsequent to her move, she was reappointed as a commissioner for an additional term. By letter from the Mayor of Greenville dated June 14, 1985, the commissioner was notified that city policy required members of commissions to be residents of the City for the duration of the term of office; thus, due to the commissioner's non-resident status, a successor was to be appointed to take the place of the commissioner. The Housing Authority has questioned the authority or procedure of removal as to residence being outside those specific reasons for removal. The City Attorney argues that residence within the city is an implied qualification which must be met on a continuing basis and further that moving out of the jurisdiction is treated as an abandonment of office.

We note from the outset that Section 31-3-340 of the Code, relative to appointment of commission members, is silent as to any qualification as to residence of appointees. However, Article XVII, Section 1 of the Constitution of the State of South Carolina 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 residence 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 Op. Atty. Gen. dated April 16, 1982; October 4, 1984; December 19, 1980; and particularly January 14, 1981 (enclosed) (magistrate must reside in the county in which he serves). Thus, we concur with the statement of the City Attorney in his letter of July 19 that "[m]unicipal officials exercising sovereign powers must be qualified electors of the city." While this residence requirement may be necessarily implied, we would also note that such a requirement was formally imposed by adoption of Resolution No. 84-R-50 by the City Council of Greenville on December 17, 1984.

Because there is thus imposed a residency requirement, the removal process to be followed once a commission member ceases to be a city resident must be addressed. As the attorney for the Housing Authority correctly notes, Section 31-3-370 of the Code does not address this situation. However, when an officer ceases to meet requirements of a continuing nature, such as

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residence (i.e., being a qualified elector), the law itself operates to remove the office-holder from office. Cf., Thomas v. Macklen, 186 S.C. 290, 195 S.E.539 (1938) (no right of nonresident to hold office). This Office has opined that when an office holder ceases to reside in the appropriate locality, he vacates his position and becomes an officer de facto until his successor is selected. See Ops. Atty. Gen. of October 4, 1968; February 17, 1956; December 16, 1970; March 8, 1978; and August 16, 1979, copies of which are enclosed. See also 3 McQuillin, Municipal Corporations, § 12.65; 67 C.J.S. Officers § 75; 63 Am.Jur.2d Public Officers and Employees § 137, as to the general law. Thus, we concur with the City Attorney's statement in his July 19 letter that "moving out of the jurisdiction is ordinarily treated as an abandonment or implied resignation of the office." The terms of Section 31-3-370 would not be applicable in this situation.

Therefore, it is the opinion of this Office that residence within the City of Greenville (and otherwise qualifying to be an elector thereof) may be necessarily implied as an additional constitutional requirement for a commissioner of the Housing Authority of the City of Greenville, in addition to the specific requirement imposed by Resolution No. 84-R-50. One who ceases to be a qualified elector of the City of Greenville, by virtue of changing residence, would by operation of law vacate his or her office, though the officer would continue to serve in a de facto capacity until the vacancy is filled. Section 31-3-370 as to removal would not apply in this situation.

Please advise if we may provide additional information or clarification.

Sincerely,

*Patricia D. Petway*

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Assistant Attorney General

PDP:djg  
Enclosures

REVIEWED AND APPROVED BY:

*Robert D. Cook*  
Robert D. Cook  
Executive Assistant for Opinions

cc: Joseph M. Jenkins, Jr., Esquire