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The State of South Carolina



Office of the Attorney General

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August 27, 1985

Gerald C. Smoak, Sr., Esquire
Colleton County Attorney
Post Office Drawer 581
Walterboro, South Carolina 29488

Dear Mr. Smoak:

You have requested the opinion of this Office on whether an individual moving from the district from which he was elected to serve on Colleton County Council would continue to serve the remainder of his term and, if not, how his replacement would be selected. You have provided this Office a memorandum of law on the issue and also copies of court orders relevant to the formation of districts from which four of the five members of Colleton County Council are elected. For the reasons following, we concur with your conclusions.

Colleton County Council members are elected as follows: Seat 1 is elected by the qualified electors of the county at large; Seats 2 and 3 are elected by the qualified electors of the eastern district of the county, which boundaries are specified; and Seats 4 and 5 are elected by the qualified electors of the western district of the county, which boundaries are also specified. You have advised that the individual in question was elected to Seat 5 on council as a resident of the western district. Subsequent to his election, the individual has moved his permanent residence from the western district to the eastern district of Colleton County.

We concur with your conclusion that since the individual in question has made a permanent move of residence from the western to the eastern district, he could not continue to serve as a

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member of council representing the western district. Section 4-9-90, Code of Laws of South Carolina (1976 & 1984 Cum.Supp.), requires that "[i]n the event that the members of the governing body are required to be elected from defined single-member election districts, they shall be elected by the qualified electors of the district in which they reside." Furthermore, Article XVII, Section 1 of the State Constitution requires that public officers elected or appointed to any office must be qualified electors; such qualifications include residence. See Section 7-5-120 of the Code. While qualifications as to residence must be met as of the day of election, such requirements are deemed to be continuing throughout the officer's tenure of office. 67 C.J.S. Officers § 18. Because the individual has, according to your letters, given up his residence in the western district, he is no longer qualified to serve on Colleton County Council from Seat 5.

The court orders attached to your memorandum provide the following concerning terms of office and vacancies:

The terms of office of the members shall be for four years or until their successors are elected and qualified In case of a vacancy, a successor shall be chosen in the manner provided by law and shall serve for the unexpired portion of the term.

We thus concur with your conclusion that while the individual in question has vacated his seat by his permanent change of residence, he would continue to serve on council until his successor has been selected and qualified. Cf., Bradford v. Byrnes, 221 S.C. 255, 70 S.E.2d 228 (1952).

Reference is made in the court order to filling vacancies as provided by law. Section 4-9-90 of the Code provides in pertinent part that

[v]acancies on the governing body shall be filled in the manner of original election for the unexpired terms in the next general election after the vacancy occurs or by special election if the vacancy occurs one hundred eighty days or more prior to the next general election.

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You have advised that the individual in question was elected in November 1984 for a four-year term. Because the next general election is more than one hundred eighty days away from being held, we concur with your conclusion that the vacancy would be filled by a special election.

We trust that the foregoing has satisfactorily responded to your inquiries. Please advise this Office if we may provide clarification or additional assistance.

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions