

ASHWORTH 4  
A

Library 1760

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11148  
COLUMBIA S.C. 29211  
TELEPHONE 803-758-2072

February 28, 1985

Charles W. Whetstone, Jr., Esquire  
Post Office Box 437  
U. S. 601 North  
St. Matthews, South Carolina 29135

Dear Mr. Whetstone:

I am in receipt of your recent letter in which you stated that a member of the Town Council of Santee has left your Town without giving any notice or a forwarding address. You have inquired if his office may be deemed vacant if you give notice of a hearing and he does not appear at that hearing.

South Carolina Code of Laws, 1976, as amended, Section 5-7-200(a) provides that

[a]...councilman shall forfeit his office if he (1) lacks at any time during his term of office any qualification for the office prescribed by the general law and the Constitution....

Section 5-7-210 provides that

[t]he council shall be the judge of the election and qualifications of its members and of the grounds for forfeiture of their office and for that purpose shall have power to subpoena witnesses, administer oaths and require the production of evidence. A member charged with conduct constituting grounds for forfeiture of his office shall be entitled to a public hearing, and notice of such hearing shall be published in one or more newspapers of general circulation in the municipality at least one week in advance of the hearing. Decisions made by the council under this section may be appeal to the court of common pleas.

Charles W. Whetstone, Jr., Esquire  
February 28, 1985  
Page Two

The council, therefore, is empowered to decide if the office is forfeited by calling witnesses, etc. The fact that the councilman does not appear at the hearing after published notice would not appear in and of itself to determine whether or not the office is forfeited. It would appear that further testimony or evidence would be needed from persons who could establish whether or not he actually lives in the Town. (See enclosed opinion of November 22, 1971, which sets forth various criteria.) For example, testimony could perhaps be received from the agencies who supply him municipal services such as water as to whether or not he is using water at his address and paying such bills for this service.

I am not familiar with another area that has had a similar occurrence and the foregoing is only intended as general advice on the question and not an official legal opinion by our Office.

Sincerely,



Treva G. Ashworth  
Senior Assistant Attorney General

TGA/bm