2835 Library

The State of South Carolina

Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-734-3970

July 27, 1987

The Honorable Larry A. Martin
Member, House of Representatives
Post Office Box 247
Pickens, South Carolina 29671

Dear Representative Martin:

Referencing a provision in Act No. 799, 1952 Acts and Joint Resolutions, you have asked that this Office advise you as to the meaning to be accorded the provision. Membership on the Fort Hill Natural Gas Authority is to consist of six persons who live in the corporate limits, or within one mile therefrom, of six specified municipalities. You wish to know whether the residence of a member must be located within the specified geographic limits of a particular municipality, or whether it is sufficient that the tract upon which the residence is located be contained within the specified limits.

In construing acts of the General Assembly, the primary objectives of the courts and this Office are to determine and effectuate the legislative intent, if at all possible. If the terms of the statute are clear and unambiguous, such terms must be applied literally. Anders v. South Carolina Parole and Community Corrections Board, 279 S.C. 206, 305 S.E.2d 229 (1983). Words are to be given their plain and ordinary meanings. Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980). For the following reasons, we advise that to "live in the corporate limits of [_____], or within one mile therefrom," one must look to the physical location of the residence, rather than to the tract of land upon which it is located.

Courts have construed the phrase "lived in" as being "the same as residence, domicile and place of abode." Freund v. Hastie, 13 Wash. App. 731, 537 P.2d 804, 806 (1975), citing

other cases. The place where one eats, sleeps, or has his washing done is a consideration looked at when courts examine various localities which may be claimed by an individual as his actual, physical residence. Clarke v. McCown, 107 S.C. 209, 92 S.E. 479 (1917). If a person's place of residence is bisected by the boundary line between two localities or political subdivisions, courts have gone as far as considering in which portion of the residence the sleeping accommodations are located to determine the actual residence of the individual in question. 28 C.J.S. Domicile § 14; 25 Am.Jur.2d Domicil § 38; also East Montpelier v. Barre, 79 Vt. 542, 66 A. 100 (1906). It is clear that courts look to the location of the residence, and in close cases the location of sleeping accommodations in the residence, to determine where one lives or resides. Physical location of the tract of property upon which the residence is located is not the primary consideration; one may well imagine the results which could be reached if this were the case.

Determining the question of one's residence involves a mixed question of fact and law. The intention of the individual is the controlling element. Clarke v. McCown, supra. As advised in a somewhat similar situation, the actual determination of one's residence may be made only by ascertaining the individual's intentions, having reviewed all of the relevant facts. Op. Atty. Gen. dated May 14, 1987, enclosed. Such a determination is outside the scope of this Office and must be left to the appropriate fact-finder, such as a court. Op. Atty. Gen. dated December 9, 1983.

If it should be determined that an individual appointed to serve on the Authority's governing body does not actually live within the specified residency limitations, you have asked by what authority this issue should be addressed and what procedures should be followed. Only a court could actually remove the affected individual from office, having first determined that the residency requirement has not been met. To bring the matter before the court, a declaratory judgment or quo warranto action could be commenced; there may be other appropriate causes of action, as well.

We must advise that unless and until such an individual should be properly determined to not meet the residency requirement, an individual appointed to the Authority in a fashion comporting with the terms of Section 3 of Act No. 799 of 1952 would, at the very least, be deemed to be a de facto officer. A de facto officer is "one who is in possession of an office, in good faith, entered by right, claiming to be entitled thereto,

and discharging its duties under color of authority." Heyward v. Long, 178 S.C. 351, 183 S.E. 145, 151 (1936). Any acts performed by a de facto officer in relation to the public or third parties will be considered as valid and effectual as those of a de jure officer unless or until a court should declare the acts void or remove the individual from office. Op. Atty. Gen. dated February 10, 1984.

We trust that the foregoing has adequately responded to your inquiry. Please advise if clarification or further advice should be needed. By providing this opinion, this Office does not intend to usurp the functions of the courts or to make the factual determination that the individual is not qualified to serve on the Fort Hill Natural Gas Authority.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosure

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions