

1981 WL 158110 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 14, 1981

*1 Senator Deway Wise

P. O. Box 142

Suite 610, Gressette Senate Office Building

Columbia, S.C. 29202

Dear Senator Wise:

In a letter to this office you questioned whether an individual, who resides outside Charleston County, is eligible to be appointed as a magistrate for Charleston County.

[Article V, Section 23 of the South Carolina Constitution](#), and [Section 22-1-10, Code of Laws of South Carolina](#), 1976, provide for the appointment of magistrates in each county in this State. However, such provisions do not specifically reference residency requirements for magistrates. Furthermore, I have not found any statutory provisions establishing specific residency requirements for all Charleston County magistrates.¹

The South Carolina Supreme Court in [McLure v. McElroy](#), 211 S.C. 106, 44 S.E.2d 101 (1947) held that all officers, constitutional and statutory, whether elected or appointed, must be qualified electors. See also: [Lee v. Clark et al.](#), 224 S.C. 138, 77 S.E.2d 485 (1953); [State ex rel. Harrelson v. Williams, Mayor](#), 157 S.C. 290, 154 S.E. 146 (1930). Moreover, in [Blalock v. Johnson](#), 180 S.C. 40, 185 S.E. 51 (1936) the Supreme Court determined that the petitioner, who had not been issued a registration certificate in Cherokee County and, therefore, was not a qualified elector in such county, was not eligible to be appointed tax collector in Cherokee County.

Referencing the above-cited decisions and the provisions now delineated as Article XVII, Section 1 and [Article I, Section 5 of the South Carolina Constitution](#), this Office has in prior opinions stated that a magistrate must be a qualified elector of a particular county in order to be appointed as magistrate for such county. See: 1963 [Ops. Attorney General](#), No. 1571, p. 140; 1974 [Ops. Attorney General](#), No. 3774, p. 149. As to the particular question concerning residency requirements for Charleston County magistrates, it may be determined that such requirements should be construed to be those residency requirements to be a qualified elector in Charleston County. Referencing [Article II, Section 4 of the South Carolina Constitution](#) and [Section 7-7-910, Code of Laws of South Carolina](#), 1976 which state that individuals are eligible to register to vote in the precinct of their residence, an individual may be considered to be a qualified elector of Charleston County only if he resides within Charleston County. Therefore, in the opinion of this office, to be eligible for appointment as a magistrate in Charleston County an individual must reside within Charleston County.

Sincerely,

Charles H. Richardson

Assistant Attorney General

Footnotes

¹ Act No. 252 of 1973 [58 STATS. 291] provides generally for the location of magistrates in Charleston County. However, it is specifically provided in such Act that:

‘ . . . (t)he magistrate for the parish of St. Andrews may reside within or without the limits of the City of Charleston west of the Ashley River and within the parish; . . . ’

Such magistrate appears to be the only magistrate whose specific residency is prescribed.

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