

1983 WL 182046 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 2, 1983

***1 RE: Your Letter of August 16, 1983**

Wendal E. Jenkins
Chief
Pickens Police Department
Pickens, South Carolina 29671

Dear Chief Jenkins:

This letter is written in response to your letter of August 16, 1983. Because your question is a mixed question of law and fact, and because the ultimate resolution of these issues by the trial court will turn on facts which will be produced before the court and at which I am not privy, I have elected to answer your question with a letter of advice rather than a formal opinion of this office.

The first part of your question deals with whether or not an out-of-state construction worker employed and living in South Carolina must obtain a South Carolina motor vehicle license and registration for his personal vehicle which was licensed in his 'home' state. This question is answered in the affirmative. An individual who has moved into South Carolina from another state and who lives here for a period of time must register his vehicle in South Carolina. [Section 56-3-160 of the 1976 CODE OF LAWS OF SOUTH CAROLINA](#) provides as follows:

'Every foreign vehicle moved into the state, the owner of which is a resident of this State, immediately becomes liable for registration and license under the provisions of this chapter, and for purposes of this section the term 'resident of this state' shall include every person who moves temporarily or permanently into this state for the purpose of engaging in any business, profession or employment.'

Under the plain meaning of this section of the Code, the construction worker, having moved into the state for purposes of employment, is required to register and license his vehicle in accordance with South Carolina law. Section 56-3-210 provides a grace period of ten (10) days, after which the vehicle must be licensed and registered.

The second portion of your inquiry dealt with whether or not a construction worker licensed in a foreign state who has moved into South Carolina for purposes of employment, must obtain a South Carolina driver's license. A slightly different standard governs the question of a foreign construction worker's driver's license. [Section 56-1-20 of the CODE OF LAWS OF SOUTH CAROLINA](#), 1976, generally requires all motorists operating motor vehicles within this state to possess a valid motor vehicle driver's license issued to him under the provisions of Title 56. Section 56-1-30 provides certain exemptions from this licensure requirement, including the following language under subsection (2):

'A nonresident who is at least sixteen (16) years of age and who has in his immediate possession a valid operator's or chauffeur's license issued to him in his home state or country may operate a motor vehicle, but a person may not claim nonresidence exemption under this provision who does not maintain a permanent residence address in the state or country of which he holds a valid and current operator's or chauffeur's license at which he regularly receives his mail and which address is on file with the motor vehicle authorities of that state or country; also, a person may not claim nonresidence exemption under this provision who for all other intents and purposes has or may remove his residence into this state;'

***2** Under the terms of this provision, a construction worker who has moved into this state for the purposes of employment may claim exemption from South Carolina's licensure requirement if he comes within the two basic provisions of this subsection. First he must maintain a permanent residence address within the state from which he holds a current operator's or chauffeur's license. He must regularly receive his mail at this permanent residence address, and this address must be on file with the motor vehicle authorities of the licensing state. A close reading of your letter does not reveal to me whether or not the individual in question has met this requirement.

Even if the individual has maintained a permanent residence address in the foreign state, receives mail at this address, and has his address on file with the state issuing his driver's license, the question which must then be addressed is whether, for all other intents and purposes, the individual ' . . . has or may move his residence into this state.'

The term 'residence' is not defined in Section 56-1-30, and, therefore, several principles of statutory construction must be applied in interpreting it. Generally, the primary object of statutory construction is to give effect to the intention of the legislature in enacting a statute. [Span v. SLED](#), 249 S.C. 609, 155 S.E.2d 859 (1967). Such a term is not to be read alone, but in the context in which it is used in the entire enactment, read as a whole. [Kaufman v. Columbia Y.M.C.A.](#), 212 S.C. 337, 47 S.E.2d 788 (1948).

The word 'residence' in the last sentence of Subsection (2) of Section 56-1-30 follows immediately after a section defining residence in a foreign state in terms of a permanent address at which mail is regularly received. Clearly, reading the statute as a whole, a temporary residence in South Carolina for employment purposes is not wholly inconsistent with the maintenance of a permanent residence in the foreign state. Accordingly, residence, as utilized in this statute, contemplates more than mere physical presence within the state. 'Residence' has been construed by our courts to be essentially equivalent to 'domicile' institutes dealing with several other governmental functions. See e.g. [Phillips v. S.C. Tax Commission](#), 195 S.C. 472, 12 S.E.2d 13 (1940) [Taxation]; [Ferguson v. Employees Mutual Casualty Company](#), 254 S.C. 235, 174 S.E.2d 768 (1970) [Insurance]; [Gasque v. Gasque](#), 246 S.C. 423, 143 S.E.2d 811 (1965) [Divorce Action]. 'Domicile' has been defined as ' . . . the place where a person has his true, fixed, and permanent home and principal establishment, to which he has, whenever he is absent, an intention of returning.' [Gasque v. Gasque](#), *supra*.

Where it is essentially equivalent to domicile, the determination of the residence of an individual is a mixed question of law and fact. [Clark v. McCown](#), 107 S.C. 209, 92 S.E. 479 (1917). As such, the determination of your construction worker's residence by the trial court will turn upon facts adduced at the trial of the case. Therefore, it will be impossible for this office to give you a definitive answer to your question at this time.

***3** However, it may be helpful to you to discuss other questions of fact that may be inquired into at trial. One primary question is the intent of the individual. [Clark v. McCown](#), *supra* page 213. Factual evidence of the individual's intent to change his residence may be found in such manifestations as where the individual pays income and property taxes, where he remains registered to vote, or what permanent address he utilizes in filling out various forms and applications. You will no doubt wish to probe these areas at trial.

In short, the first question in determining whether to prosecute an out-of-state driver residing in South Carolina is to determine whether or not he maintains a permanent address and receives mail in the foreign state in which he is licensed, and whether or not that address is on file with the motor vehicle authorities in that state. If all these tests are met, a determination must be made whether or not the individual, for all other intents and purposes, has manifested a desire to move his residence into South Carolina. This will largely turn on the intent of the individual concerned, as manifested by his behavior.

I hope that this letter is of assistance to you in determining what to do with your cases. If we can offer further assistance, please contact me.

Yours very truly,

M. Richbourg Roberson

Senior Assistant Attorney General

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