1983 WL 181982 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
August 29, 1983

***1** Helen T. Zeigler, Esquire
Special Assistant for Legal Affairs
Office of the Governor
Post Office Box 11450
Columbia, South Carolina 29211

Dear Ms. Zeigler:
You have requested the opinion of this office as to whether Mr. Johnny B. Shelly is eligible to continue serving on the Marion County Board of Social Services. It is our opinion that Mr. Shelly is eligible to continue serving on that board; however, this opinion is not free from doubt.

The county boards of social services are established by Section 43-3-10, Code of Laws of South Carolina, 1976, as amended, which provides in pertinent part:
There is created in each county of the State . . . a county board of social services . . . to be composed of not less than three nor more than nine members. The members shall be appointed by the Governor upon the recommendation of a majority, including the Senator, of the county legislative delegation. The terms of the members shall be for three years and until their successors have been appointed and qualify. In case of a vacancy caused by death, removal, resignation or otherwise, such vacancy shall be filled as provided in this section, but only for the unexpired term.

Although the statute does not prescribe any criteria for eligibility for appointment to a county board of social services, this office has previously ruled that one must be a qualified elector of the county in order to be eligible for appointment to that county's board of social services. Unpub. Op. Att'y. Gen. dated April 16, 1982, to Honorable Thomas M. Marchant, III. Further, we have declared that, pursuant to Article II, § 4 of the South Carolina Constitution, and Sections 7-5-120 and 7-7-910, Code of Laws of South Carolina, 1976, one must reside within a county in order to be a qualified elector therein. Id. Our April 16, 1982, opinion, however, did not address the issue of what constitutes 'residency.' Resolution of that issue is essential to responding to your inquiry.

In Clarke v. McCown, 107 S.C. 209, 92 S.E. 479 (1917), certain votes in an annexation election were challenged on the ground that those persons casting the challenged votes were not residents of the area to be annexed. The Supreme Court addressed the issue of residency in these terms:
The residence of a person is a mixed question of law and fact; and the intention of that person with regard to the matter is deemed the controlling element of decision. His intention may be proved by his acts and declarations, and perhaps other circumstances; but when these, taken all together, are not inconsistent with the intention to retain an established residence, they are not sufficient in law to deprive him of his rights thereunder, for it will be presumed that he intends to continue a residence gained until the contrary is made to appear, because inestimable political and valuable personal rights depend upon it. * * *

That a man does not live or sleep or have his washing done at the place where he has gained a residence, or that his family lives elsewhere, or that he engaged in employment elsewhere are facts not necessarily inconsistent with his intention to continue his residence at that place[.]

***2** 107 S.C. 213-214. [1] Consistent with Clarke, this Office has said: ' A person may move from his original home, and voting place, and live elsewhere but retain his legal domicile at his original home and be able to return to the original home to vote.' 1957-1958 Ops. Att'y. Gen. 141. We have also opined that ' t he permanent residence of an elector is not affected by a temporary absence when the intention of such absence is not to be permanent.' 1964-1965 Id., 15. Accord, Ravenel v. Dekle, 265 S.C. 364, 378, 218 S.E.2d 521 (1975) (' T emporary absences normally do not bring about a forfeiture of . . . residency.') [2] Thus, to determine whether Mr. Shelly is a resident of Marion County, it is necessary to examine his intent as manifested by his declarations and his actions.

You advise that Mr. Shelly resided in Marion County when he was first elected to the Marion County Board of Social Services but that some time thereafter he married and moved into his wife's house in Florence County. It appears that, since his marriage, Mr. Shelly has maintained his voter registration in Marion County and continues to vote in all elections in that county in which his precinct is eligible to participate: he has never attempted to register to vote in Florence County. Further, he has not sold or attempted to sell his home in Marion since his marriage. Additionally Mr. Shelly has maintained his membership and continues to worship at the Marion Baptist Church; he owns and maintains a business in Marion and works there on a daily basis; he pays personal as well as real property taxes to Marion County; he maintains his personal checking account with a bank in Marion County; most of his personal property is situated in Marion County; he is an active member of Marion County civic organizations; and his parents and children by a prior marriage live in Marion. In addition, Mr. Shelly's wife intends to sell her house in Florence within the next two years at which time Mr. and Mrs. Shelly intend to return, for dwelling purposes, to Marion County. Finally, Mr. Shelly professes that he is a resident of Marion County and that he has never intended or considered himself to be a resident of Florence County.

Assuming that Clarke represents the current state of the law, see n. 1, supra, it is our opinion that Mr. Shelly is a resident of Marion County. Since residency is determined by one's intent, the fact that Mr. Shelly's wife may be a resident of Florence County is immaterial to the question of whether Mr. Shelly is a resident of Marion County. Cf. 1975-1976 Ops. Att'y. Gen. 145 (woman living with her husband is not prohibited from establishing her own residency for purposes of voting in South Carolina even though her active duty military husband did not declare South Carolina as his legal residence). There is a presumption in favor of the continuity of Mr. Shelly's residency in Marion County. Clarke, supra, 107 S.C. 213. This presumption is strongly corroborated by the objective indicia of Mr. Shelly's intent enumerated above. That Mr. Shelly does not sleep every night or eat every meal in Marion County does not, in the face of the other objective indicia of his intent, defeat his claim to continued residency in Marion County. Id., 107 S.C. 214. Accordingly, for the foregoing reasons, it is our opinion that Mr. Shelly is still eligible to serve on the Marion County Board of Social Services.

Sincerely,

***3** Vance J. Bettis
Assistant Attorney General

Footnotes

1 Two cases decided after Clarke are difficult to reconcile with Clarke and may well bring into question the continued validity of Clarke's holding on the issue of residency. In Easler v. Blackwell, 195 S.C. 15, 10 S.E.2d 160 (1940), the Court construed the words 'qualified resident electors of said district' as used in a statute pertaining to election of school district trustees to mean those qualified electors who made their homes in the district, who lived and slept in the district and who had a residence in the district as opposed to those qualified electors who merely had their businesses in the district, worked in the district, or earned their livelihood in the district. Clerke was distinguished on the basis that it dealt with construction of the term 'qualified elector' whereas in Easler the court was construing the words 'only qualified resident electors.' 195 S.C. 23. In Creamer v. City of Anderson, 240 S.C. 118, 124 S.E.2d 788 (1962), the court adhered to Easler in construing a statute limiting eligibility to vote in annexation elections to '[r]egistered qualified voters residing within the corporate limits of the municipality and registered qualified electors residing within the territory proposed to be annexed'. The court held that the trial court had correctly construed this language as limiting the right to vote only 'to those registered qualified electors actually residing in each of the respective areas at the time of the election, as distinguished from those who, although having their legal domicile in such area, were actually residing elsewhere.' 240 S.C. 127.

Although neither Easler nor Creamer expressly overruled Clarke—indeed, neither even questioned Clarke—there is an obvious tension between the holdings of Easler and Creamer on the one hand and Clarke on the other. Whether Easler and Creamer are to be viewed as nothing more than cases involving construction of legislative enactments or whether, instead, they are to be viewed as redefining 'residency' for all purposes remains to be seen. Because of the apparent conflict between Easler/Creamer and Clarke, and because Easler/Creamer may have overruled Clarke's holding regarding residency sub silentio, our opinion that Mr. Shelly is a resident of Marion County must be qualified as not being free from doubt.

2 Ravenel held that Article IV, § 2 of the South Carolina Constitution, which mandates that a candidate for the office of Governor have been 'a citizen and resident of this State for five years next preceding the day of election[,]' requires not only that a candidate have been a domiciliary of South Carolina but also that such candidate have physically resided in the State for the five years next preceding the day of election. The Ravenel case turned on the construction of the phrase 'citizen and resident' in Article IV, § 2. The court concluded that the framers intended that the words 'citizen' and 'resident' have distinct meanings. Although not irrelevant, Ravenel sheds little light on the issue under consideration, namely, whether Mr. Shelly is a resident of Marion County.

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