

1981 WL 158194 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 18, 1981

\*1 Edward L. Sessions, D.C.  
Chairman  
South Carolina Board of Chiropractic Examiners  
3835 Rivers Avenue  
Charleston, South Carolina 29405

Dear Dr. Sessions:

You have requested an opinion concerning the status of a member of the South Carolina Board of Chiropractic Examiners who was appointed by the Governor in 1980 as a chiropractic practitioner residing in a particular congressional district and who has subsequently changed his residence within the State to a place outside that congressional district. It is the opinion of this office that that person has become disqualified and that his seat on the Board became vacant upon his moving his residence beyond the congressional district from which he was appointed.

[Section 4-9-30, CODE OF LAWS OF SOUTH CAROLINA](#), 1976 (as amended) provides, *inter alia* that [t]he Governor shall appoint to the Board of Chiropractic Examiners from each Congressional District one chiropractor licensed pursuant to this chapter and residing in that Congressional District.

The member thus appointed is a public officer because the position is created by statute, the qualifications for appointment are fixed by statute, and the duties and tenure of the member are likewise prescribed by law. [State v. Crenshaw](#), 274 S.C. 475, 266 S.E.2d 61 (1980); [Sanders v. Belue](#), 78 S.C. 171, 174, 58 S.E. 762, 763 (1907). This Office has previously advised that if a public official must be a resident of a particular geographic area when he assumes office, then the official becomes disqualified to hold that office if he should thereafter move outside the given geographic area. A.G. Op. dated July 10, 1958. This is consistent with the general law which provides that if an officer is required by law to be a resident to a particular district, his removal therefrom will create a vacancy which may be filled by appointment. 63 Am.Jur.2d 'Public Officers and Employees,' § 137.

Since there is now a vacancy on the Board, that position should be filled for the remainder of that unexpired term by appointment of the Governor following an advisory election in the appropriate congressional district conducted by the Board. [§ 4-9-30](#), *Id.* Although the incumbent member has lost his legal title to the office he may continue to function as a de facto officer until his successor is appointed.

Therefore, it is the opinion of this Office that the seat of the member who moved beyond the congressional district from which he was appointed has now become vacant by virtue of his moving beyond that congressional district. That vacancy should now be filled in the manner provided by statute.

Sincerely yours,

David C. Eckstrom  
Assistant Attorney General

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