

1979 S.C. Op. Atty. Gen. 79 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-62, 1979 WL 29067

Office of the Attorney General

State of South Carolina

Opinion No. 79-62

April 12, 1979

**\*1 SUBJECT: Property Tax—Residential Classification—Resident Servicemen**

A South Carolina resident in military service and stationed outside the State cannot claim the legal residence classification for a residence owned by such person and rented to others.

TO: Honorable J. Leroy Marlow  
Spartanburg County Assessor

**QUESTION:**

A person in military service and stationed outside of South Carolina owns a residence in Spartanburg County. The residence is rented for purposes of reducing vandalism and the serviceman has some furniture in the residence. Can the residence qualify for the residential classification?

**APPLICABLE LAW:**

Section 12-43-220(c) and 50 U.S.C.A. 574.

**DISCUSSION:**

The federal statute, the Soldiers' and Sailors' Relief Act, 50 U.S.C.A. 574, provides that under the facts stated the legal residence of the serviceman may be South Carolina, notwithstanding his actual presence outside the State. For purposes of this opinion we assume that the serviceman is a South Carolina resident. Section 12-43-220(c) provides for the residential classification when the property is occupied by the owner. The applicable language is that:

'The legal residence and not more than five acres contiguous thereto when owned totally or in part in fee, or by life estate and occupied by the owner \* \* \*.' (Emphasis added)

Here, there is the relationship of a landlord and tenant.

'The relation of landlord and tenant exists where one person occupies the land of another in subordination to the other's title, and with his consent, express or implied.' [Columbia Ry., Gas and Electric Co. v. Jones](#), 119 S.C. 480, 112 S.E. 267. (Emphasis added)

The tenant occupies the residence and under such circumstances the property cannot qualify for the classification.

**CONCLUSION:**

A South Carolina resident in military service and stationed outside the State cannot claim the legal residence classification for a residence owned by such person and rented to others.

Joe L. Allen, Jr.  
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