

1979 WL 43192 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 30, 1979

*1 Mrs. Betty Adams
Town Clerk and Treasurer
Town of Salley
Salley, South Carolina 29137

Dear Mrs. Adams:

You have asked the opinion of this Office on whether a person who has been disqualified from voting in a municipal election due to his not being a resident thereof can be required to pay to the municipality taxes on his automobile.

In order to be a qualified voter for a municipal election, a person must be a resident of the municipality at the time he registers to vote and the time he presents himself to vote. [Article, II, §§ 4, 5, South Carolina Constitution; § 7-5-120, Code of Laws of South Carolina, 1976](#). Instead of reciting herein the legal and factual principles and tests used to define and determine residency with regard to voting, I have enclosed three previous opinions by this Office which contain excellent discussions thereon. One of the opinions indicates that residency for purposes of taxation may be considered as evidence in determining residency for voting at a later time.

Municipalities possess the power to levy taxes on personal property situate within the municipality. §§ 5-7-30, 5-21-110, as amended. Personal property, such as an automobile, not used in connection with a business is considered situate in the municipality, if any, where the owner resides at the time the property is listed for such taxation. § 12-37-890.

Thus, municipal voting and the municipal taxation of personal property both depend on the residency of the person at specific, but different times. Recognizing the similarity of the determining factor for these purposes, the South Carolina Supreme Court has stated:

. . . it has been laid down broadly that residence for the purpose of voting is the same in kind as that required to make one liable for a personal tax, although there is authority contra . . . [Phillips v. S.C. Tax Commission](#), 195 S.C. 472, 479-480 (1940).

The Court further indicated that residency for voting may be considered as one of the items of evidence in determining residency for taxation at a subsequent time.

Based on the foregoing, it is the opinion of this Office that the determination of whether a person is a resident of a municipality for the purpose of voting in a municipal election is based upon his residence as of the time he registers to vote and the time he presents himself to vote. It is the further opinion of this Office that the determination of where one resides for the purpose of municipal taxation of personal property is based upon his residency as of the time the property is listed for taxation. It is the further opinion of this Office that the location of one's residence for one of these purposes would be evidence as to the determination of residence for the other purpose, but it would not be controlling in view of other evidence indicating a different residence subsequent to the earlier determination.

Sincerely,

James M. Holly

State Attorney

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