

1978 WL 34856 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 13, 1978

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Dear Mr. Hiers:

Mr. McLeod has referred your letter to me for reply. You have requested clarification as to who constitutes a freeholder as that word is used in Section 28-9-20 of the South Carolina Code of Laws, 1976.

Section 28-9-20 states that five (5) freeholders will be selected to fix the value of the land or assess any damages to the landowner of property to be condemned by a municipality. A definition for the word 'freeholder' as used in this statute is not given and therefore in the absence of a legislative enactment, a definitive definition of the term is virtually impossible.

'Freeholder' is defined in BLACK'S, 4th ed., as:

One having title to realty . . . Either of inheritance or for life . . . Either legal or equitable title . . . A person who possesses a freehold estate.

[Harley v. City of Spartanburg, 230 S.C. 478, 96 S.E.2d 838 \(1957\)](#) dealt with the interpretation of 'freeholder' as used in [Section 5-3-20 of the South Carolina Code of Laws](#) (which establishes the procedure for annexation) prior to the enactment of 5-3-240 which defined freeholder for the purposes of this section. The court stated at page 488:

The term 'freeholder' has received many definitions . . . It is apparent from the cases reviewed . . . that the decisions on the question who is a freeholder cannot be reconciled . . . We need not determine in the instant case exactly what character of estate is necessary to constitute one a freeholder. Much would depend upon the intention of the Legislature in the particular statute involved.

Elsewhere in the opinion, at page 490, it is stated that 'Probably no two persons would reach the identical result' of who was a freeholder in this case, and, it may be implied, in any case. The definition of 'freeholder' as set out in Section 5-3-240 cannot be applied as the definition of the same word in Section 28-9-20, as Section 5-3-240 is expressly limited by definition to the provisions relating to annexation. It may only be used as a showing of legislative intent in this area.

It may be preferable to select freeholders who live in the municipality as they would be aware of the land prices, etc.; however, as the statute does not require the freeholder to be a resident of the municipality, it cannot be read into the statute.

Without a definition of the word 'freeholder' for the purposes of this statute, it would appear that the BLACK's definition of 'freeholder' would apply. Therefore, any person who owns property in this State would be a freeholder under the terms of this statute.

This opinion is issued with reservation due to the unsettled status of the law in this State as to a clear definition of the word 'freeholder'. This opinion cannot be free from doubt as to possible judicial interpretation or subsequent legislative determination; therefore, you might wish to raise the issue in an appropriate judicial proceeding.

Very truly yours,

*2 Treva G. Ashworth
Assistant Attorney General

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