

1978 S.C. Op. Atty. Gen. 114 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-88, 1978 WL 22568

Office of the Attorney General

State of South Carolina

Opinion No. 78-88

May 9, 1978

***1 SUBJECT: Homestead Exemption—Legal Residence**

A person who owns a residence in one county, however, who actually resides in another county in the residence of his spouse and who is registered to vote in the county of the spouse's residence and who pays personal property taxes to the county of the spouse's residence does not meet the requirements for the homestead exemption.

TO: Honorable Gerald W. Burnett
Deputy Comptroller General

QUESTION:

Does a person who owns a residence in one county, however, who actually resides in another county in the residence of his spouse and who is registered to vote in the county of the spouse's residence and who pays personal property taxes to the county of the spouse's residence meet the requirements for the homestead exemption?

STATUTE:

[Section 12-37-250 of the 1976 Code of Laws.](#)

DISCUSSION:

The statute provides a limited exemption from ad valorem taxes for the dwelling place of certain residents of South Carolina provided such persons meet other requirements for the exemption. The term 'dwelling place' is defined in the statute to mean:

'* * * the permanent and legal residence of the applicant * * *.'

Regarding the term 'residence' our Court, in the case of [Phillips v. South Carolina Tax Commission](#), 195 S. C. 472, 12 S. E. 2d 13, stated:

'* * *. But a distinction has long been made between actual residence and legal residence. In the quite recent case of [Roof v. Tiller](#), 195 S. C. 132, 10 S. E. 2d 333, opinion filed April 3, 1940, the Court quotes with approval a definition of residence where a distinction is recognized between legal and actual residence. And as stated in 17 Am. Jur. 596, 'The phrase 'legal residence' is sometimes used as the equivalent of domicile'; and it seems to me that in connection with the matter of the assessment of an income tax no sound distinction can be drawn between 'legal residence' and 'domicile'.

The term 'domicile' means the place where a person has his true, fixed and permanent home and principal establishment, to which he has, whenever he is absent, an intention of returning. The true basis and foundation of domicile is the intention, the quo animo, of residence. [Bradley v. Lowry, Speers](#), Eq. 1, 39 Am. Dec. 142.'

The Court further compared the residence for tax purposes and the residence for voting purposes and stated:

‘* * * it has been laid down broadly that the residence required to make one liable for a personal tax is precisely the same in kind as that which will entitle such person to vote in a particular place. * * *.’

Here the person concedes that his residence for voting is the county of the spouse's residence. It is significant that the application for voter registration requires an affirmative answer to the following question:

‘I am a resident of South Carolina, this county and in the voting precinct at which I will be entitled to vote * * *.’

*2 The above is a part of the application that is made under the penalty of perjury for willfully and knowingly misstating the truth. The above question is set forth in § 7–5–170 and the county residence requirement is provided by § 7–5–120. The application for voter registration is the sworn statement of the applicant and in the absence of clear proof that the same is false or incorrect, the certificate may be accepted to establish the person's legal residence for purposes of the homestead exemption.

CONCLUSION:

A person who owns a residence in one county, however, who actually resides in another county in the residence of his spouse and who is registered to vote in the county of the spouse's residence and who pays personal property taxes to the county of the spouse's residence does not meet the requirements for the homestead exemption.

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