

1978 S.C. Op. Atty. Gen. 158 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-126, 1978 WL 22594

Office of the Attorney General

State of South Carolina

Opinion No. 78-126

June 23, 1978

***1 SUBJECT: Property Tax—Occupancy for Residential Classification**

The legal residence of a person is occupied for purposes of the residential classification notwithstanding the fact such person maintains another residence and divides actual residency between such places.

TO: W. E. Jenkinson, III, Esq.
Williamsburg County Attorney

QUESTION:

Is the legal residence of a person occupied for purposes of residential classification for tax purposes when such person maintains another residence and partly occupies both the legal and the other residence on a frequent and periodic basis?

APPLICABLE LAW:

Article 10, Section 1(3) and Section 12-43-220(c).

DISCUSSION:

From the facts presented we have no difficulty in concluding that the Kingtree house is the legal residence of the person for which the residential classification is sought.

Factually you advise that the Kingtree residence is owned and maintained as the person's home. It is furnished, all utilities are connected, mail is delivered to that address, the person stays in the residence on all holidays for an extended period, the person is at the residence a week or ten days every month, and almost continually from Thanksgiving to Christmas, and the residence is deemed occupied for insurance purposes. The person's bank account, credit accounts and church membership are in Kingtree. The person's declaration is that the Kingtree home is such person's legal residence. Clearly, the Kingtree residence is the person's legal residence. [Phillips v. South Carolina Tax Commission](#), 195 S. C. 472, 125 S. E. 2d 13.

The statute, Section 12-43-220(c), provides as a condition to the classification that the legal residence be occupied by the owner. Is therefore the residence occupied within the language of the statute?

We find no case from this state, however, it has been held that:

'The provisions of homestead tax exemption statute for 'actual occupancy' by owner do not mean that owner must occupy the property in person every day in the year or a majority of the days of a year, but that there must be such occupancy as is not inconsistent with ownership and maintenance of the dwelling as homestead and place of abode.' [Turner v. Board of County Tax Assessors](#), 31 S. E. 2d 61, 63, 71 Ga.App. 374. See also [Words and Phrases](#), Vol. 2, p. 442.

CONCLUSION:

The legal residence of a person is occupied for purposes of the residential classification notwithstanding the fact such person maintains another residence and divides actual residency between such places.

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