

1975 WL 29224 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 13, 1975

*1 When a person rents property under terms that put in doubt that such property is the legal residence of the landlord, the homestead exemption should be denied.

Honorable W. S. Richbourg
Auditor
Clarendon County
Manning, South Carolina 29102

Dear Mr. Richbourg:

Reference is made to your letter of February 5, 1975, wherein a request is made for the opinion of this office concerning the homestead exemption. You advise that a lady in your county has applied for the exemption asserting that the property for which the exemption is claimed is the place of her permanent and legal residence. The applicant rented the property to another person; however, retained two rooms in the house and there is dispute as to the rights of the applicant to the use of the remainder of the property. Her brother states that the applicant retained kitchen and bathroom privileges; however, the tenant advises that the applicant did not have kitchen or bathroom privileges, that the applicant had not stayed on the property for some time before he moved in and that the applicant had not spent any time there since the tenant has been in possession. The applicant is registered to vote in Clarendon County.

Section 65-1522 defines the term 'dwelling place' to mean the permanent home and legal residence of the applicant and, under settled principles of law, it is the applicant's duty to comply with all requirements of the exemption.

'Constitutional and statutory language creating exemptions from taxation will not be strained or liberally construed in favor of taxpayer claiming exemption, but he must clearly bring himself within constitutional or statutory language upon which he relies.' [York County Fair Ass'n v. South Carolina Tax Commission](#), 249 S. C. 337, 154 S. E. 2d 361.

The term 'legal residence' was held to be synonymous with 'domicile' in the case of [Phillips v. South Carolina Tax Commission](#), 195 S. C. 472, 12 S. E. 2d 13.

'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.'

Under the facts as submitted, there is doubt that the property rented to another is the legal residence of the applicant, therefore, the conditions for the exemption have not been satisfied.

Yours very truly,

Joe L. Allen, Jr.
Assistant Attorney General

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