

1974 WL 27665 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 12, 1974

*1 Kelly F. Zier, Esq.
City Attorney
North Augusta
P. O. Box 6516
North Augusta, South Carolina 29841

Dear Mr. Zier:

Thank you for your letter of January 11, 1974, in which you forwarded a letter to this Office for reply concerning the meaning of the word 'freeholder' as used in South Carolina Code of Laws, 1962, Section 47-835.

Section 47-835 deals with the procedure for initiating a petition for an election on the question of the issuance of bonds, and it states in part:

... there shall be filed with the municipal council a petition signed by a majority of the freeholders of such municipality, as shown by its tax books, petitioning the municipal council to hold an election of the sort provided for by the Constitution of the State upon the question of issuing bonds of the 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 at 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. the issue. BLACK'S, 4th ed., defines 'estate' as:

The interest which any one has in lands or in any other subject of property . . . There is no such legal entity as an 'estate' . . . It cannot be made the plaintiff in an action as it is not a person and cannot sue or be sued.

In [Carter v. Wroten](#), 187 S.C. 432, 198 S.E. 13 (1938), it is stated ' . . . the phrase, 'estate of' does not refer, by any reasonable intendment, to a person or persons . . . '. Therefore, it is the opinion of this office that for the purposes of this section an estate would not constitute a freeholder.

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'. Therefore, this opinion cannot be free from doubt as to possible judicial interpretation or subsequent legislative determination.

Sincerely,

Treva Ashworth
Staff Attorney

1974 WL 27665 (S.C.A.G.)