

1974 WL 27715 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 16, 1974

\*1 The legal residence of the wife is generally that of her husband for purposes of the homestead exemption.

Honorable Evelyn W. McMillan  
Bamberg County Auditor  
P. O. Box 179  
Bamberg, South Carolina 29003

Dear Mrs. McMillan:

Reference is made to your letter of April 15, 1974, wherein you request the opinion of this office regarding the homestead exemption. A resident of your county during the preceding two tax years applied for and received the homestead exemption, and during 1973 she remarried and now lives in Florence County with her husband. The homestead exemption has been granted to her husband for the homestead in that county, however, application has been made to your office for the homestead exemption in your county.

The exemption is for the 'dwelling place' of the applicant, and the General Assembly has defined that to be the permanent home and legal residence of the applicant. Our court in the case of [Phillips vs. South Carolina Tax Commission](#), 195 S. C. 472, 12 S. E. 2d 13, considered the term legal residence and domicile to mean:

'\* \* \* 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. \* \* \*. One of the essential elements to constitute a particular place as one's domicile or principal place of residence is an intention to remain permanently, or for an indefinite time, in such place.'

The domicile of the wife is generally that of her husband:

'Following the rule established at common law, a woman on her marriage loses her own domicil and, by operation of law, acquires that of her husband, no matter where the wife actually lives or what she believes or intends. Her domicil is fixed in the sense that it is declared to be the same as his. \* \* \*.' 25 Am. Jur. 2d, Domicil, Section 48.

There may be exceptions to the above rule, however, you advised that the wife now lives in Florence County and that the residence in Bamberg County is more in the nature of a summer or vacation home and further that the wife has registered her automobile in Florence County, changing the same from Bamberg County. Section 46-17 of the Code provides for the application for the registration and licensing of automobiles and requires, among other things, that the name, bona fide residence and mail address of the owner or business address of the owner if a firm, association or corporation and the county and school district in which the applicant resides be set forth thereon.

Under the factual information as set forth, it is the opinion of this office that the homestead exemption cannot be granted by your county because the applicant therefor is not a legal resident of your county.

Yours truly,

Joe L. Allen, Jr.

Assistant Attorney General

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