



ALAN WILSON  
ATTORNEY GENERAL

December 17, 2020

Steve Willis  
County Administrator  
Lancaster County  
Post Office Box 1809  
Lancaster, SC 29721

Dear Mr. Willis:

We received your request for an expedited opinion of this Office concerning the ability of a county elected official to continue to serve in office when they are no longer a registered voter in the State of South Carolina. In your letter, you explain the auditor for Lancaster County listed a Myrtle Beach address as her address for purposes of voter registration and you are concerned this is “contrary to the requirement in Section 1 of Article 6 of the South Carolina Constitution which states ‘. . . and serve in office of this state or its political subdivisions unless he possesses the qualifications of an elector . . . .’” You mentioned you reached out to the Governor’s Office with your concerns and “[t]he Governor’s Office made an inquiry to Auditor Wallace who reported she has rescinded her voter registration in Horry County.” In addition, it is your understanding that “Auditor Wallace is no longer a registered voter in any county.” As such, you request an opinion of this Office “regarding the eligibility of an elected official, who met the requirements when elected, to continue to serve if they no longer meet all requirements to hold their office.” You also add “Auditor Wallace was defeated in the June primary and will leave on June 30, 2021.”

#### **Law/Analysis**

Section 1 of article XVII of the South Carolina Constitution (2009) states: “No person shall be elected or appointed to any office in this State unless he possess the qualifications of an elector . . . .” In addition, section 1 of article VI of South Carolina Constitution (2009) provides: “No person may be popularly elected to and serve in any office in this State or its political subdivisions unless he possesses the qualifications of an elector . . . .” According to our Supreme Court,

all officers, constitutional and statutory, and whether elected or appointed, must be qualified electors, and the legislature may not add other conditions for eligibility to those specified in the constitution for election or appointment to constitutional offices, that is, those offices created by the constitution; but as to offices established only by legislative acts, the General Assembly may

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prescribe other and additional qualifications which are reasonable in their requirements.

McLure v. McElroy, 211 S.C. 106, 119, 44 S.E.2d 101, 108 (1947), *overruled in part by* Weaver v. Recreation Dist., 328 S.C. 83, 492 S.E.2d 79 (1997).

In section 7-5-120 of the South Carolina Code (2019), the Legislature specifies the qualifications to become a registered voter in this State, which include a requirement that the individual “is a resident in the county and in the polling precinct in which the elector offers to vote.” Accordingly, this Office has long recognized residency as a requirement to hold office. Op. Att’y Gen., 1985 WL 289213 (S.C.A.G. Aug. 27, 1985). Moreover, in a 1996 opinion, we considered what is meant by the term “qualified elector” and determined it means “‘registered elector’ or registered voter.” Op. Att’y Gen., 1996 WL 265791 (S.C.A.G. Apr. 19, 1996). We concluded “one who has not been registered to vote cannot be elected to and hold a public office.” Id. (citing Art. XVII S.C. Const.; Mew v. Charleston & S. Ry. Co., 55 S.C. 90, 32 S.E. 828 (1899); Blalock v. Johnston, 180 S.C. 40, 185 S.E. 51 (1936); Wright v. State Board, 76 S.C. 574, 57 S.E. 536 (1907)); *see also* Ops. Att’y Gen., 1976 WL 30662 (S.C.A.G. Feb. 11, 1976); 1974 WL 22443 (S.C.A.G. Oct. 17, 1974); 1970 WL 16660 (S.C.A.G. Jan. 5, 1970) (all finding an individual must be registered to vote in order to hold office).

In your letter, you indicate the Lancaster County auditor was eligible when she was elected, but question her ability to continue to serve based on her voter registration status. In several opinions, this Office concluded not only must an officer meet the qualifications of an elector at the time of the election, but “qualifications such as residence are deemed to be continuing throughout the officer’s tenure.” Op. Att’y Gen., 1993 WL 494585 (S.C.A.G. Oct. 18, 1993); *see also* Ops. Att’y Gen., 2006 WL 981694 (S.C.A.G. Mar. 28, 2006) (“A member of the St. Andrews Public Service District must remain a resident of the District in order to continue to be qualified to serve.”); 1985 WL 259213 (S.C.A.G. Aug. 27, 1985) (finding a county council member who moved to another district within the county was no longer qualified to serve).

Section 4-9-60 of the South Carolina Code (1986) provides for the election of county auditors. Therefore, anyone who wishes to be elected as a county auditor in South Carolina must be a qualified elector, meaning a registered voter, in the county he or she represents. Moreover, based on our prior opinions, the auditor must maintain his or her qualifications, including the residency requirement, throughout his or her term of office.

You informed us that the current auditor for Lancaster County took steps to change her voter registration to another county within the State and subsequently acted to renounce her registration entirely. As we stated in numerous opinions, “this office cannot determine facts noting that the determination of facts is beyond the scope of an opinion of this office.” Op. Att’y Gen., 2010 WL 928445 (S.C.A.G. Feb. 18, 2010). Therefore, despite the information you provided, we cannot conclusively determine registration status of the Lancaster County auditor in an opinion of this Office.

Nonetheless, based on the facts you provided, it is important to note that in prior opinions, we determined an officer who fails to maintain the residency requirement automatically vacates or forfeits their office “at the time they cease to be a resident of the affected district or political subdivision.” Op. Att’y Gen., 1993 WL 494585 (S.C.A.G. Oct. 18, 1993); see also Op. Att’y Gen., 2003 WL 22172231 (S.C.A.G. Sept. 16, 2003) (stating a county council member who moved districts vacated her office as she no longer lives in the district she represents). However, the officer would “would continue to serve in a *de facto* capacity until his successor could be selected . . . .” Id.; see also Bradford v. Byrnes, 221 S.C. 255, 262, 70 S.E.2d 228, 231 (1952) (holding “in the absence of pertinent statutory or constitutional provision, public officers hold over *de facto* until their successors are appointed or elected and qualify.”); Op. Att’y Gen., 2006 WL 981694 (S.C.A.G. Mar. 28, 2006) (“If the member no longer resides in the District, he or she automatically vacates the Office, but continues as a *de facto* officer until a successor is chosen and qualifies.”). If the auditor has in fact failed to maintain her status as a qualified elector in Lancaster County, she automatically vacates or forfeits her office, but could continue to serve in a *de facto* capacity until a successor is selected and qualified.<sup>1</sup>

If a vacancy occurs in the office of a county auditor, in accordance with our 2012 opinion, we believe, the Governor may appoint an interim auditor to fill a vacancy. Op. Att’y Gen., 2012 WL 3057449 (S.C.A.G. Jul. 13, 2012) (finding the Governor may appoint a replacement to fill the office of a county auditor after the auditor’s retirement). This opinion relied on section 1-3-220 of the South Carolina Code (2005), giving the Governor the authority to make appointments to fill a vacancy in a county office, and section 4-11-20 of the South Carolina Code (1986), allowing the Governor to fill a vacancy in a county office until the next general election. Id. Accordingly, if position of Lancaster County auditor is deemed to have been vacated, we believe the Governor may appoint someone to fill a vacancy in the office of auditor.<sup>2</sup>

Our 2012 opinion also mentioned that should the Governor choose not to appoint someone to fill a vacancy, section 12-39-40(B) of the South Carolina Code (2014) provides “if there is a vacancy in the office of county auditor by reason of death, resignation, or disqualification, the appointed deputy shall carry out the duties of the office until a successor is appointed or elected and qualified.” Id. Thus, if a county auditor appointed a deputy in accordance with section 12-39-40(A) of the South Carolina Code (Supp. 2019), the deputy could also fulfill the duties of the auditor until the newly elected auditor takes office.

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<sup>1</sup> “[W]e have repeatedly advised that an action to contest one’s right to hold office is properly brought before a court through the commencement of a *quo warranto* or declaratory judgment action.” Op. Att’y Gen., 2013 WL 3133640 (S.C.A.G. June 7, 2013).

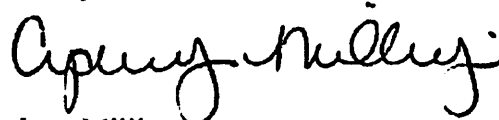
<sup>2</sup> This opinion also clarified although the Governor may appoint someone to fill a vacancy in the office of a county auditor, a new auditor must be elected at the next general election unless such an election is impossible due to time constraints. Op. Att’y Gen., 2012 WL 3057449 (S.C.A.G. Jul., 13, 2012). We understand a new auditor was elected in Lancaster County at the most recent general election in November. Therefore, any appointee chosen by the Governor to fill a vacancy would only serve until the newly elected auditor takes office on July 1, 2021.

**Conclusion**

Based on prior opinions of this Office, we believe all elected officials, including county auditors, must constitute qualified electors, which means they must be register to vote in the area they intend to represent. Moreover, we have opined that this requirement must be maintained throughout the official's term of office and the failure to do so results in a vacancy or forfeiture of the office. However, the determination of the Lancaster County auditor's status as a qualified elector in Lancaster County in these circumstances involves a factual determination and is therefore, beyond the scope of an opinion of this Office.

Nonetheless, should the facts support a finding that the Lancaster County auditor is no longer a qualified elector in Lancaster County, she is deemed to have vacated or forfeited her office but may continue to serve in a *de facto* capacity until her successor is appointed or elected. We also believe the Governor has the authority to appoint someone should a vacancy in the auditor's position occur. In the alternative, if the auditor has deputy, he or she could assume the auditor's duties until the next auditor takes office if the Governor chooses not to appoint someone to fill the vacancy.

Sincerely,



Cydney Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General