



ALAN WILSON
ATTORNEY GENERAL

June 11, 2021

Mr. Shannon Haskett
Board Chair
School District of Pickens County
1348 Griffin Mill Rd.
Easley, SC 29640-6997

Dear Mr. Haskett:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter asks the following:

The Pickens County Voter Registration & Elections Commission certified Alice Vander Linden as elected to serve as the school trustee for seat 7 in the School District of Pickens County after the 2018 general election. In November 2020, Ms. Vander Linden sold the house she had resided in for over 50 years. She currently is not living within the boundaries of seat 7 and indicates in the enclosed statement she provided to the Board in April 2021 that she does not have a permanent residence at this time. Her mailing address is in Lexington County, at the home where her husband resides. The question raised by the sale of her house and current living arrangements is whether or not she remains eligible to serve as the Board member for seat 7.

Article XVII, § 1 and Article VI, § 1 of the South Carolina Constitution require that an officeholder possess the qualifications of an elector. Article IV, section 1, specifically provides that "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 " (emphasis added). Section 7-5-1 20 of the SC Code of laws details these qualifications. In particular, Section 7-5-120 requires, *inter alia*, that an elector be "a resident of the county and in the polling precinct in which the elector offers to vote." S.C. Code Ann. § 7-5-1 20(A)(3).

In addition to the foregoing, South Carolina Act No. 104 of 2017 requires that, for the Board of Trustees of the School District of Pickens County, "[beginning with the 2018 general election, the board must be comprised of seven members, each of whom must be a qualified elector and each must reside in the single-member district he represents." Likewise, Board Policy BBBC states "[i]f a board

member's permanent residence ceases to be in his/her school district, a vacancy is created and such change of permanent residence outside the school district will be treated as a resignation."

Law/Analysis

It is this Office's opinion that when a School District of Pickens County board of trustee member ("board member") fails to maintain her residence within the district that she represents, she would no longer be qualified to serve on the board. Our prior opinions have discussed the constitutional requirement that "officers" must be qualified electors:

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 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).

Op. S.C. Att'y Gen., 2020 WL 7862620 (December 17, 2020); see also Op. S.C. Att'y Gen., 2006 WL 981694 (March 28, 2006) ("[W]here a residency requirement has not been specified by the legislature, such may necessarily [be] implied, to prevent circumvention of the Constitution."). As noted in the request letter, the General Assembly directed that the seven members of the Board of Trustees of the School District of Pickens County each "must be a qualified elector and each must reside in the single-member district he represents." 2017 Act No. 104, § 1. Therefore, the appropriate jurisdiction to consider for whether a board member is qualified to serve is the district represented by the particular seat.

Our opinions have also concluded that elected officials must maintain their status as qualified electors throughout their term of office or the office would be forfeit.

[W]e believe all elected officials ... 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.

Op. S.C. Att’y Gen., 2020 WL 7862620, at *3 (December 17, 2020); see also Op. S.C. Att’y Gen., 2006 WL 981694, at 3 (March 28, 2006) (“[P]ublic officers vacate or forfeit their offices at the time they ceased to be a resident of the affected district or political subdivision.”). It is this Office’s opinion that a board member of the School District of Pickens County would likewise vacate or forfeit his office by operation of law if she fails to maintain her residence in the district from which she was elected.

The determination of residency is, however, a mixed question of fact and law. This Office’s July 11, 2016 opinion explained that the question of residency “primarily” depends the board member’s intent:

The Supreme Court of South Carolina described the concept of residency in Clarke v. McCown when it stated:

The residence of a person is a mixed question of law and fact; and the intention of that person with regard to the matter is deemed the controlling element of decision. His intention may be proved by his acts and declarations, and perhaps other circumstances; but when these, taken all together, are not inconsistent with the intention to retain an established residence, they are not sufficient in law to deprive him of his rights thereunder, for it will be presumed that he intends to continue a residence gained until the contrary is made to appear, because inestimable political and valuable personal rights depend upon it...

That a man does not live or sleep or have his washing done at the place where he has gained a residence, or that his family lives elsewhere, or that he engages in employment elsewhere are facts not necessarily inconsistent with his intention to continue his residence at that place. ...

107 S.C. 209, 213-214, 92 S.E. 479, 480 (1917) (emphasis added).

The South Carolina Code of Laws incorporates this emphasis on the intention of the voter when determining residence. Indeed, the statutory definition of domicile and the [listed] elements to find a change of domicile [both] reference the voter's intention. The definition of domicile includes the voter's “intention to return when absent.” S.C. Code § 7-1-25(A). To find a voter changed his domicile both the voter's “present intent to make that place his home, and [lack of] present intention to leave [that place]” are listed among the elements to find a voter changed his domicile. S.C. Code § 7-1-25(B). South Carolina Code § 7-1-25(D) lists eleven nonexclusive factors to consider in determining a person's intent

regarding his domicile. These sections are consistent with case law and this Office's prior opinions which hold that a determination of residency depends primarily on the intent of the voter.

The South Carolina Court of Appeals noted that a distinction has long been made between the concepts of a "legal residence" determined by a person's domicile, and an "actual residence" determined by his "present physical location." Estate of Nicholson ex rel. Nicholson v. S. Carolina Dep't of Health & Human Servs., 377 S.C. 590, 597, 660 S.E.2d 303, 306 (Ct. App. 2008).

Op. S.C. Att'y Gen., 2016 WL 3946156, 4-5 (July 11, 2016). It is this concept of "legal residence," S.C. Code. Ann. § 7-1-25, which is used to determine whether a board member remains qualified to hold office.¹

Again, determining residency requires a findings of fact which are beyond the scope of this Office's opinions. The Declaratory Judgments Act permits "any person interested ... whose rights, status or other legal relations are affected by a statute ... may have determined any question of construction or validity arising under the ... statute... and obtain a declaration of rights ..." S.C. Code § 15-53-30. This Office has previously opined that this act serves the same function as a writ of *quo warranto* to determine a person's eligibility to hold title to office. See Op. S.C. Att'y Gen., 2007 WL 419410, at *3 (January 17, 2007) (discussing procedure for determining officer's eligibility for office and removal from office if found ineligible). Accordingly, the act authorizes our state courts to determine an officer's eligibility and permits the courts to order removal when warranted. See Florence Cty. v. Moore, 344 S.C. 596, 545

¹ See S.C. Code § 7-1-25.

(D) For voting purposes, factors to consider in determining a person's intention regarding his domicile include, but are not limited to:

- (1) a voter's address reported on income tax returns;
- (2) a voter's real estate interests, including the address for which the legal residence tax assessment ratio is claimed pursuant to Section 12-43-220(C);
- (3) a voter's physical mailing address;
- (4) a voter's address on driver's license or other identification issued by the Department of Motor Vehicles;
- (5) a voter's address on legal and financial documents;
- (6) a voter's address utilized for educational purposes, such as public school assignment and determination of tuition at institutions of higher education;
- (7) a voter's address on an automobile registration;
- (8) a voter's address utilized for membership in clubs and organizations;
- (9) the location of a voter's personal property;
- (10) residence of a voter's parents, spouse, and children; and
- (11) whether a voter temporarily relocated due to medical care for the voter or for a member of the voter's immediate family.

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S.E.2d 507 (2001) (determining eligibility of county treasurer appointed by governor to serve remainder of the office's unexpired term).

If a member is found to have vacated her seat, she would continue to serve in a de facto capacity until a successor is elected and seated. See Op. S.C. Att'y Gen., 2006 WL 981694, at 3 (March 28, 2006) (“[T]he decision in Bradford v. Byrnes, 221 S.C. 255, 70 S.E.2d 228 (1952), states that ‘in the absence of pertinent statutory or constitutional provision, public officers hold over de facto until their successors are appointed or elected and qualify.’”).

Conclusion

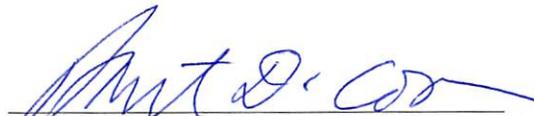
As discussed more fully above, it is this Office's opinion that when a School District of Pickens County board of trustee member (“board member”) fails to maintain her residence within the district that she represents, she would no longer be qualified to serve on the board. The General Assembly directed that the seven members of the board each “must be a qualified elector and each must reside in the single-member district he represents.” 2017 Act No. 104, § 1. Therefore, the appropriate jurisdiction to consider for whether a board member is qualified to serve is the district represented by the particular seat. Moreover, a board member would likewise vacate or forfeit her office by operation of law if she fails to maintain her residence in the district from which she was elected. Determining residency, however, requires a findings of fact which are beyond the scope of this Office's opinions. An interested party may petition our state courts under the Declaratory Judgments Act to determine an officer's eligibility and order removal when warranted. See S.C. Code § 15-53-30. If a member is found to have vacated her seat, she would continue to serve in a de facto capacity until a successor is elected and seated. See Op. S.C. Att'y Gen., 2006 WL 981694, at 3 (March 28, 2006).

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General