

7164 Lefevre



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER  
ATTORNEY GENERAL

April 21, 2004

The Honorable John Hawkins  
Senator, District No. 12  
Post Office Box 142  
Columbia, South Carolina 29202

Dear Senator Hawkins:

In a letter to this office you indicated that a question has arisen with regard to the residency requirement for a candidate for Charleston County Council. The individual has been informed by the Charleston County Election Commission that he is ineligible to be a candidate for that office because he does not currently live in the county council district. It is my understanding that the individual is a candidate for the District 7 seat.

According to my information, members of Charleston County Council are required to be elected from single member districts. It is my information that the candidate for District 7 filed a Statement of Intention of Candidacy pursuant to S.C. Code Ann. Section 7-11-15 which contained the affirmation by the candidate that "I hereby affirm that I meet or will meet by the time of the general or special election, or as otherwise required by law, the qualifications to hold this office." In that Statement, the candidate gave as his address the same address as the voter registration records shows as his residence. It is my information that the address given by the candidate and set forth in his voter registration records is not located within Charleston County Council District 7 and, therefore, the candidate did not presently reside within District 7 as of the time of filing for office.

As provided by Article XVII, Section 1 and Article VI, Section 1 of the State Constitution, an office holder must possess the qualifications of an elector. S.C. Code Ann. Section 7-5-120 states that an elector must be a "resident in the county and in the polling precinct in which the elector offers to vote." Such is consistent with the requirements of S.C. Code Ann. Section 4-9-90 that "in the event the members of the governing body...(county council)...are required to be elected from defined single-member election districts, they must be elected by the qualified electors of the district in which they reside." However, as further stated by Section 4-9-90, "for the purpose of this section, a council member will be deemed a resident of the district he represents as long as he resides in any part of the district as constituted at the time of the election." (emphasis added). Consistent with such provision, this office has indicated in prior opinion dated October 18, 1993 that to be elected to a county council position where the election is held according to defined single member districts, an individual must be a qualified elector who resides in the district he is to represent. The opinion

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further stated that in such circumstances, "one's qualification for office is determined as of the date of election." Other opinions have reached similar conclusions. See: Op. Atty. Gen. dated February 19, 1998 ("It has been the consistent opinion of this office that a candidate must be qualified as of the time of the general election."); Op. Atty. Gen. dated November 20, 1997 ("If a candidate is not a qualified elector at the time of the election, his election is a nullity."); Op. Atty. Gen. dated April 19, 1996 (citing State ex rel. Harrelson v. Williams, 157 S.C. 290, 154 S.E.164 (1930), "Ordinarily, candidates' qualifications are determined at the time of the election and not at the time of nomination."); Op. Atty. Gen. dated November 15, 1995 ("Ordinarily, the time for determining a candidate's qualification for holding office is the date of election.").

Therefore, consistent with the above-referenced opinions and the specific language of Section 4-9-90 that a council member is considered a resident of a district as long as he resides in any part of that district at the time of the election, in my opinion, the candidate for District 7 must reside in that district as of the date of his election. The fact that the candidate did not live in the district at the time of his filing for office would not preclude him from being a candidate. Such interpretation would also be consistent with the candidate's Statement of Intention of Candidacy pursuant to S.C. Code Ann. Section 7-11-15 which contained the affirmation by the candidate that "I hereby affirm that I meet or will meet by the time of the general or special election, or as otherwise required by law, the qualifications to hold this office."

With kind regards, I am,

Very truly yours,



Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Assistant Deputy Attorney General