March 31, 2008

The Honorable Olin R. Phillips, Chairman
Committee to Screen Candidates for Boards of
Trustees of State Colleges and Universities
P. O. Box 11867
Columbia, South Carolina 29211

Dear Representative Phillips:

We received your letter requesting an opinion of this Office on behalf of the Joint Legislative Committee to Screen Candidates for Boards of Trustees of State Colleges and Universities. For purposes of screening candidates with residency requirements, you requested an opinion regarding 1) what determines an individual's place of legal residence; and 2) when an individual files to run for a Board seat in a particular congressional district or judicial circuit, whether the individual has to be a resident in the district or circuit at that time or whether he can move into the area once elected.

Law/Analysis

Trustees of State colleges are public officers. S.C. Code Ann. Section 8-1-10. As public officers, they must possess the qualifications of an elector. Article XVII, Section 1 of the South Carolina Constitution provides in pertinent part that "[n]o person shall be elected or appointed to any office in this State unless he possess the qualifications of an elector." In a previous opinion, dated June 12, 1995, we addressed the issue of residency and the qualification to hold public office in these terms:

> The phrase "qualified elector" means "registered elector," and no one who has not been registered to vote (and has thus met the requirements to be a qualified elector) can hold a public office, elected or appointed. Mew v. Charleston & Savannah Ry. Co., 55 S.C. 90, 32 S.E. 828 (1899); Blalock v. Johnston, 180 S.C. 40, 185 S.E. 51 (1936). Article II, Section 4 of the state Constitution provides in relevant part that "[e]very citizen of the United States and of this State of the age of eighteen and upwards who is properly registered shall be entitled to vote in the precinct of his

> residence and not elsewhere." Qualifications to be met to be a registered elector are found in S.C. Code Ann. §7-5-120 and provide in part that
> (A) Every citizen of this State and the United States who applies for registration must be registered if he meets the following qualifications:
> ...
> (3) is a resident in the county and in the polling precinct in which the elector offers to vote.

In the June 12, 1995 opinion, we addressed the issue of what constitutes residency in South Carolina. As we stated in that opinion, "[r]esidence" for suffrage purposes means "domicile" in South Carolina. Phillips v. South Carolina Tax Commission, 195 S.C. 472, 12 S.E.2d 13 (1940); Clarke v. McCown, 107 S.C. 209, 92 S.E. 479 (1917). One's domicile is "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." O'Neill's Estate v. Tuomey Hospital, 254 S.C. 578, 583-584, 176 S.E.2d 527 (1970). An intention to remain permanently, or for an indefinite time, in a place is one of the essential elements of domicile. Barfield v. Coker & Co., 73 S.C. 181, 53 S.E. 170 (1906). Intent of the individual is probably the most important element in determining the residency of an individual. Ravenel v. Dekle, 265 S.C. 364, 218 S.E.2d 521 (1974). Intent is primarily a question of fact, determined on a case by case basis.

In Clarke v. McCown, supra, the South Carolina Supreme Court, addressing the issue of residency, stated the following:

> 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....
> Clarke v. McCown, 107 S.C. at 213-214.

The enabling statutes governing membership on Boards of Trustees of State colleges and universities often include residency requirements for members. For example, the statute governing the composition of the Board of Trustees of the University of South Carolina provides that the Board membership shall include one member from each of the sixteen judicial circuits. S.C. Code Ann.

Section 59-117-10. Interpreting this statute, we have previously opined that a member of the Board of Trustees of the University of South Carolina must be a resident of the judicial circuit that he represents on the Board. Op. S.C. Atty Gen., May 1, 1975.

It is our understanding that the position in question leading to your opinion request is a position on the Board of Trustees of the Medical University of South Carolina (MUSC). Under S.C. Code Ann. Section 59-123-40, the Board of Trustees of MUSC is to be composed as follows: "The Governor (or his designee), ex officio, twelve members to be elected by the General Assembly in joint assembly and one member to be appointed by the Governor...." (emphasis added). S.C. Code Ann. Section 59-123-50 governs the election of board members of MUSC, and provides in pertinent part that "...[o]ne member of the medical profession from each congressional district and one layman or member of a nonmedical profession from each congressional district must be elected."

It is our opinion that in order to be eligible to serve on a Board of Trustees with statutory residency requirements such as the MUSC Board, an individual must demonstrate that he is qualified, by virtue of his residence in the specified congressional district, to be an elector in that district. That an individual is a qualified elector of a particular county would be determined by that county's board of voter registration (Op. S.C. Atty Gen., June 12, 1995), based on the factors of residency referenced above. Thus, the fact that an individual is registered to vote in a particular county strongly indicates (but is not dispositive of the fact) that he is a resident of that county. As stated in Clarke v. McCown, supra, the intent of the individual is the controlling element of decision.

We now turn to your second question: At what time is the determination of residency to be made? You asked whether an individual must be a resident of the district or circuit for which he is seeking a Board seat at the time he files to run for the seat, or whether he can move into the area once elected.

A candidate for office must not only be a qualified or registered elector, but must be eligible to vote in the election that elects him. State ex rel Culp v. City Council of Union, 95 S. C. 131, 78 S.E. 738 (1913). As we have previously opined, in South Carolina a candidate must be qualified as of the time of election under State ex rel Culp v. City Council of Union. Under the decision in Blalock v. Johnston, 180 S. C. 40, 185 S. E. 51, a candidate seeking appointive office must be qualified at the time he is recommended for office. Op. S.C. Atty Gen., April 17, 1968.

While Section 59-123-50 references the "election" of members of the Board of Trustees, we have previously opined that "election" by the General Assembly is, in reality, a collective appointment. In our opinion dated March 4, 2003, we stated as follows:

> With these underlying principles in mind, we recognize that for many, many years, the General Assembly has "elected" public officers such as judges, commissioners, trustees, etc. through a joint assembly. This process has traditionally consisted of the Legislature convening as one body with a majority of that body controlling. While oftentimes this selection method is referred to as an "election," it is in reality an appointment by a body acting collectively - in this instance, the House and Senate sitting as one. Legislative appointment is authorized both by the State Constitution as well as statutory enactments. These provisions employ slightly differing phraseology, but all to the same end - appointment by the Legislature in joint assembly.
> Op. S.C. Atty Gen., March 4, 2003.

Bearing this principle in mind, we apply the principle set forth in Blalock v. Johnston, supra, that a candidate seeking appointive office must be qualified at the time he is recommended for office, as well as the principle found in State ex rel Culp v. City Council of Union that a candidate must be qualified as of the time of election. It is our opinion that an individual seeking a position on the Board of Trustees of a State college or university must be qualified at the time he is collectively appointed ("elected") to that office by the General Assembly.

In a prior opinion addressing qualification for membership on the South Carolina Manufactured Housing Board, we stated that a person who was disqualified at the time of the appointment could not later cure this defect and be qualified to hold office. Op. S.C. Atty Gen., February 17, 1983. Applying this principle to the issue at hand, it is our opinion that a candidate for a position on a State college or university Board of Trustees, the qualifications for which include a residency requirement, cannot become a resident after his collective appointment ("election") by the General Assembly. He must meet the residency qualification at the time of election, or to be precise, at the time at which he is collectively appointed by the Legislature.

Conclusion

The residence of a person is a mixed question of law and fact, and the intention of the person is the controlling element. The fact that an individual is registered to vote in a particular county strongly indicates (but is not dispositive of the fact) that he is a resident of that county. Of course, the fact-specific determination of whether an individual is a resident of the district for which he is seeking a Board seat is a determination to be made by the General Assembly.

An individual seeking the collective appointment of the General Assembly to a position on the Board of Trustees of a State college or university must be qualified at the time of collective appointment ("election"). Therefore, it is our opinion that where the qualifications for a Board seat include a

residency requirement, the individual must be a resident of the district for which he is seeking a Board seat at the time he is collectively appointed ("elected") by the General Assembly for office.

Sincerely,

Henry McMaster
Attorney General

By: Elizabeth H. Smith
Assistant Attorney General

REVIEWED AND APPROVED BY:

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Robert D. Cook
Deputy Attorney General