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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

July 7, 1999

The Honorable William C. Mescher
Senator, District No. 44
601 Gressette Building
Columbia, South Carolina 29202

RE: Informal Opinion

Dear Senator Mescher:

Attorney General Condon has forwarded your opinion request to me for reply. You have asked whether members of the Goose Creek Recreation Commission must reside within the boundaries of the Recreation Commission. By way of background, you state the following:

The Goose Creek Recreation Commission (GCRC), formally the Goose Creek Park and Playground Commission, is regulated by terms and conditions of General and Permanent Law No. 1093. The Commission was formed as a special purpose district on June 8, 1966. The Berkeley County Council has the authority to enlarge, or diminish, the GCRC district boundaries.

Section 2 of 1093, see enclosed copy, contains the following language "The Commission shall be composed of seven members, ... Each of the seven major subdivisions within the territorial jurisdiction (of the Commission) shall be represented on the commission." Since 1966 this language has been assumed to mean the drafters of the legislation intended for Commission members to reside within the Commission borders. This interpretation seems logical, just, and reasonable. All Commission board members, to date, have resided within Commission boundaries.

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The Berkeley County Council recently approved new GCRC boundaries, which boundaries exclude all of the City of Goose Creek. The City will become a client of the GCRC. Residents of the City will pay a fee for use of GCRC facilities.

LAW/ANALYSIS

Article XVII, §1 of the State Constitution provides "[n]o person shall be elected or appointed to any office in this State unless he possess the qualifications of an elector..." Where a residency requirement has not been specified by the legislature, such may be necessarily implied, to prevent circumvention of the Constitution. McLure v. McElroy, 211 S.C. 106, 44 S.E.2d 101 (1947) *overruled on other grounds by Weaver v. Recreation District*, 328 S.C. 83, 492 S.E.2d 79 (1997). Further, to be qualified as an elector, one must meet the requirements specified in S.C. Code Ann. § 7-5-120. One of the requirements listed in this section is that an individual must be "a resident in the county and in the polling precinct in which the elector offers to vote." Residency is a mixed question of fact and law and turns on the individual's intent. Op. Atty. Gen. dated May 7, 1991.

This Office has issued several opinions on questions similar to the one raised in your opinion request. For example, in an opinion dated May 7, 1991, we were asked whether a person residing outside of the New Prospect Area Fire District, but owning land in the district, may be appointed to the Board of Fire Control for the district. The enabling legislation provided that the Board shall be composed of "five members who shall be appointed by the Governor upon the recommendation of a majority of the Spartanburg County Legislative Delegation." The enabling legislation was silent as to any qualifications regarding the residency of appointees. Relying on Article XVII, §1 of the Constitution and S.C. Code Ann. § 7-5-120, this Office concluded that since one must be a qualified elector of a district to be an office-holder in the district, a member of the Board of Fire Control must be a resident of the district and not merely own property therein.

In an opinion dated August 1, 1985, this Office was asked whether a mayor possessed the power to remove an individual from the office of housing authority commissioner if that individual had moved out of the city limits. In this case, a commissioner formerly residing in the City of Greenville had moved to the City of Simpsonville. After the move, the individual was reappointed to an additional term of office. As is often the case, the enabling legislation did not contain a residency requirement. The author, citing Article XVII, §1 and its implied residency requirement, concluded that an individual appointed to the office of

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housing authority commissioner must reside within the City of Greenville.

Based on the foregoing, a member of the Goose Creek Recreation Commission is an office-holder and is thus required to be a qualified elector within the district.¹ One of the requirements needed to be a qualified elector is residency within the boundaries of the district. Accordingly, in order to properly serve on the Goose Creek Recreation Commission, one must reside within the boundaries of the Goose Creek Recreation Commission. However, since residency is a mixed question of fact and law and turns on an individual's intent, you may wish to consult with the county attorney to determine whether a specific individual resides within the boundaries of the Goose Creek Recreation Commission.

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With best personal regards, I am

Sincerely yours,



Paul M. Koch

Assistant Attorney General

¹ In an opinion dated May 3, 1996, this Office concluded that members of the Goose Creek Recreation Commission are officers.