

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-734-3970

December 7, 1987

Burnet R. Maybank, III
Assistant Counsel to the Governor
Office of the Governor
Post Office Box 11369
Columbia, South Carolina 29211

Dear Mr. Maybank:

In a letter to this Office you questioned whether a non-resident employee of the Department of Energy at the Savannah River Nuclear Plant may be appointed as a special state constable. You referenced Sections 23-7-10 et seq. of the Code which provides for such appointments.

Section 23-7-10 states in part

(t)he Governor may appoint and commission as special State constables such persons, including employees of a contractor of the United States Atomic Energy Commission ... as shall be recommended to him

Pursuant to Sections 23-7-20 and 23-7-30 such special state constables are appointed for a term of two years and are required to take the oath of office prescribed by Article III, Section 26 of the State Constitution.

Article XVII, Section 1 of the State Constitution provides:

(n)o person shall be elected or appointed to any office in this State unless he possesses the qualifications of an elector....

Pursuant to Section 8-1-10 of the Code, the term "public officers" includes "... all officers of the State that have heretofore been commissioned...." An opinion of this Office dated August 28, 1959 determined that the special state constables appointed pursuant to Sections 23-7-10 et seq. are State officers. See also: Edge v. Town of Cayce, 187 S.C. 171, 197 S.E. 216 (1938).

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In McLure v. McElroy, et al., 211 S.C. 106 at 120, 44 S.E.2d 101 (1947) the State Supreme Court interpreted Article XVII, Section 1 as meaning

... all officers, constitutional and statutory, and whether elected or appointed, must be qualified electors

See also: Blalock v. Johnston, 180 S.C. 40, 185 S.E. 51 (1936); State ex rel. Harrelson v. Williams, 157 S.C. 290, 154 S.E. 164 (1930). In Mew v. Charleston and Savannah Railway Co., 55 S.C. 90, 32 S.E. 828 (1899) the State Supreme Court determined that the phrase "qualified elector" means "registered elector." To be a registered elector in this State an individual must meet the residency requirements of Section 7-5-120 of the Code. In particular, Section 7-5-120 (3) specifies that an elector be "a resident in the county and in the polling precinct in which the elector offers to vote."

Referencing the above, in the opinion of this Office, a non-resident employee of the Department of Energy at the Savannah River Nuclear Plant would not be qualified to be appointed as a special state constable pursuant to the provisions of Section 23-7-10 et seq. Inasmuch as the individual is not a resident of this State, he would not meet the requirements to be an elector in this State. See also: Opinions of the Attorney General dated December 21, 1971 and October 5, 1971. (regular state constable is required to be a registered elector)

If there is anything further, please advise.

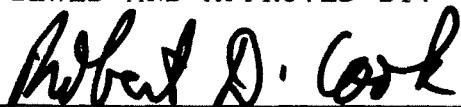
Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR/rhm

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions