

1984 S.C. Op. Atty. Gen. 271 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-118, 1984 WL 159925

Office of the Attorney General

State of South Carolina

Opinion No. 84-118

October 4, 1984

*1 The Honorable Herbert Kirsh
Member
House of Representatives
Post Office Box 31
Clover, South Carolina 29710

Dear Representative Kirsh:

You have inquired about the time frame for a city council member to submit his resignation to the council when that member moves out of the city limits. Enclosed herewith are opinions of the Attorney General, dated October 4, 1968; March 8, 1978; February 17, 1956; and December 16, 1970, which address the same or substantially similar situations. You will see that the council member would actually vacate or forfeit his office at the time he ceases to be a resident of the city, though he would continue in a de facto capacity until the vacancy is filled.

The controlling statute in this instance would be [Section 5-7-200, Code of Laws of South Carolina \(1976\)](#), which provides:

(a) A mayor or councilman shall forfeit his office if he (1) lacks at any time during his term of office any qualification for the office prescribed by the general law and the Constitution; . . .

(b) A vacancy in the office of mayor or council shall be filled for the remainder of the unexpired term at the next regular election or at a special election if the vacancy occurs one hundred eighty days or more prior to the next general election.

Section 5-15-20 (1983 Cum.Sup.), a portion of the general law, requires that mayors and council members be qualified electors of the municipality. Thus, upon moving from a municipality, a council member forfeits his office.

We do not understand that any problem exists with respect to the council member continuing to serve as a de facto, rather than de jure, council member. If there are problems or you need additional assistance, please advise us.

Sincerely,

Patricia D. Petway
Assistant Attorney General

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