

1982 WL 189289 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 12, 1982

\*1 Honorable John A. Martin  
Senator  
Box 298  
Winnsboro, South Carolina 29180

Dear Senator Martin:

This will reply to your request for an opinion concerning the eligibility of a candidate for the Office of Probate Judge in the Democratic Party primary in Fairfield County.

You advise that the candidate had previously resided in Chester County but had recently moved to Fairfield County. He was registered to vote in Fairfield County on March 25, 1982, and filed as a candidate for Probate Judge with the Fairfield County Democratic Party on March 30, 1982. You state that a number of persons in Fairfield County have questioned his eligibility as a candidate for office in Fairfield County.

As residence is a question of intent, as well as a question of fact, when a person moves to and establishes residence in a county, and is thereafter registered to vote in that county, he becomes eligible to vote and hold office in the new county of residence.

[Section 14-23-1040, Code of Laws of South Carolina](#) 1976, provides:

No person shall be eligible to the office of Judge of Probate or Associate Judge of Probate unless he is a qualified elector of the County in which he is to be such judge.

This is the general law applicable in all counties and no local exception may be made by special act. [State ex rel. McLeod v. Court of Probate, 266 S.C. 279, 223 S.E.2d 166](#). There is no statutory requirement that a person be a qualified elector of the county for any particular period of time to be eligible to be a candidate in a primary election.

Of course, the fact of residence is always subject to proof in the courts, when challenged by a party having proper standing to raise the issue. However, it is the opinion of this Office, in light of the above-cited provisions, that a person who established a residence in the county and was duly registered to vote therein is eligible to file as a candidate in a primary election if he meets the requirements for the particular office concerned (as established by the Constitution and statutes) and is not otherwise disqualified.

Sincerely,

Frank K. Sloan  
Deputy Attorney General

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