

1979 S.C. Op. Atty. Gen. 96 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-73, 1979 WL 29078

Office of the Attorney General

State of South Carolina

Opinion No. 79-73

June 5, 1979

**\*1 SUBJECT: Property Tax-Homestead Exemption and (a) twelve-month residency requirement, (b) legal residence of person who is mentally incompetent and (c) character of agency making declaration of disability.**

(1) A person must have been a resident of this State for at least one year on or before December 31 preceding the year for which the homestead exemption is claimed in order to qualify for the same.

(2) A person who is mentally incompetent cannot change legal residence during such incompetency.

(3) The declaration of disability for the homestead exemption may be made by an agency of any one of the fifty states of the United States or the federal government having authority to make such declaration.

TO: Mr. Ernest W. Cooler  
Office of Comptroller General

QUESTIONS:

1. Does the one year residency requirement mean one year from December 31 of the previous year as is required on age eligibility-or does it mean one year from date of application?

2. Is an application valid for an applicant who has been in the State Hospital for an extended period and is now in a nursing home? Applicant has never resided in the home as it was purchased after his commitment; nor, in all probability, will ever reside there as his wife is in fear of him. Application was filed by a sister who has been appointed a 'Committee for'. (Property purchased by sister as 'Committee for'.)

3. Does a disability declaration by the School Employees Retirement System's Medical Advisory Committee of Ohio satisfy the requirement for proof of disability?

APPLICABLE LAW:

[§ 12-37-250, 1976 Code](#) of Laws.

DISCUSSION:

Question 1. The homestead exemption was first enacted as Section 29 of Part II of Act 410, Acts of 1971. The exemption so enacted was subsequently repealed November 4, 1971 by Act 925, Acts of 1971. That Act replaced and continued a homestead exemption.

In the first 1971 Act, the language granted the exemption to a 'property owner resident in the State for at least one year.' Act 925 provided insofar as the residency requirement is concerned that:

‘\* \* \* such persons have been residents of this State for at least one year, have each reached the age of sixty-five years of age on or before December 31 preceding the tax year in which the exemption is claimed \* \* \*.’

Similar language is found in [Section 12-37-250](#) and it has been the settled construction of this office that the conditions required for the exemption must be met on or before December 31 preceding the year for which the exemption is claimed. The taxable status of property in this State is determined as of December 31 preceding the tax year. [Atkinson Dredging Co. v. Thomas](#), 266 S. C. 361, 223 S. E. 2d 592 (1976). See also Section 12-37-900.

#### CONCLUSION:

A person must have been a resident of this State for at least one year on or before December 31 preceding the year for which the homestead exemption is claimed in order to qualify for the same.

\*2 Question 2. The statute, [Section 12-37-250](#), defines the term ‘dwelling place’ for which the exemption applies to be: ‘\* \* \* the permanent home and legal residence of the applicant.’

It is significant to here note that the person was mentally incompetent when the residence was acquired by the committee. Because of such incompetency the person's legal residence has not been changed because the same requires intent and a voluntary act.

‘The question of a person's place of residence is to be determined by his own intention, accompanied by his own voluntary act.’ [Phillips v. South Carolina Tax Commission](#), 195 S. C. 472, 12 S. E. 2d 13.

A mental incompetent cannot change domicile or residence.

‘An adult who, because of unsoundness of mind, lacks the actual mental capacity to entertain an intent or to make a choice, necessarily lacks the capacity to change his domicil voluntarily and by his own act. Therefore, after an adult has been shown or has been judicially determined to be a mental incompetent at the time he departed from his previously established domicil for a new residence or place of abode, it is held that he is, or is presumed to be, incapable of acquiring a domicil of choice absent an affirmative showing that he in fact had sufficient mentality to choose a new domicil, and his domicil therefore continues to be what it was when he became incompetent.’ [25 Am. Jur. 2d, Domicil](#), § 77.

#### CONCLUSION:

A person who is mentally incompetent cannot change legal residency during such incompetency.

Question 3. The General Assembly has provided in the section the following:

‘\* \* \* or any person who has been classified as totally and permanently disabled by a state or federal agency having the function of so classifying persons \* \* \*.’

Additionally, a person may apply to the South Carolina Department of Vocational Rehabilitation for such a determination if one has not been made by a state or federal agency.

It is not possible to determine from the facts available whether School Employees Retirement System of Ohio is an agency of that state. If so, the declaration of that agency would, in our opinion, be sufficient to satisfy the applicant's

proof of disability. While there may be argument that the term 'a state agency' as used in the section is limited to agencies of the State of South Carolina, we, by settled rules of construction, must conclude otherwise.

'In construing a statute, the language should be given its ordinary and popular significance without resort to subtle and forced construction for the purpose of limiting its operation; the court can neither legislate nor construe a statute which is clear.' [Investors Premium Corp. v. South Carolina Tax Commission](#), 260 S. C. 13, 193 S. E. 2d 642. For other cases see [17 S. C. D., Statutes](#), Key 185.

The General Assembly in the legislation has not limited the declaration to agencies of the State of South Carolina but has specifically included those of the federal government. The term 'state' has a well-settled meaning and as used in this statute means one of the fifty geographical subdivisions of the United States. See [Words and Phrases, State](#), Volume 40.

\*3 The article 'a' does not lend any clarification of the term 'state'.

'According to Mr. Webster, 'a' means 'one' or 'any'. \* \* \* It may mean one where only one is intended, or it may be any one of a great number. That is the trouble. Of itself, it is in no sense a term or limitation.' [Brown v. Sikes](#), 188 S. C. 288, 198 S. E. 854.

We therefore apply the ordinary and customary meaning to the term 'state'.

CONCLUSION:

The declaration of disability for the homestead exemption may be made by an agency of any one of the fifty states of the United States or the federal government having authority to make such declaration.

Joe L. Allen, Jr.  
Deputy Attorney General

1979 S.C. Op. Atty. Gen. 96 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-73, 1979 WL 29078