

1974 WL 27731 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 26, 1974

***1 Re: Officers No. 231**

Honorable William W. Doar, Jr.
Senator
District No. 16
P. O. Box 418
Georgetown, South Carolina 29440

Dear Senator Doar:

You have requested that this office advise you as to whether an alien or non-citizen can be appointed to serve on a Board or a Commission in the State of South Carolina. Specifically, you have asked whether an alien can be appointed to serve on the Board of Directors of the South Carolina Public Service Authority.

Appointments to the South Carolina Public Service Authority are made pursuant to Section 59-2 of the Code of Laws of South Carolina, as amended, and the powers and the duties of the Public Service Authority are delineated in Section 59-3 of the Code of Laws of South Carolina.

The threshold question that must first be answered is whether a director of the Public Service Authority is a public officer within the meaning of Article 1, Section 5 of the South Carolina Constitution. In this regard, it is beyond cavil that a director of the South Carolina Public Service Authority is an officer of the State within the meaning of the above-referenced constitutional provision. Section 50-1 of the Code of Laws of South Carolina defines public officers and its definition clearly encompasses a director of the Public Service Authority. Additionally, our Supreme Court in the decision of [Sanders v. Belue](#), 78 S.C. 171, 174 (1907), set forth the test to be used in determining whether or not a particular individual holds a public office and is a public officer and it is clear under this decision that the duties of the directors of the Public Service Authority, as specified in Section 59-3 of the Code of Laws of South Carolina would make them public officers within the test set forth in [Sanders v. Belue](#), *supra*.

Article 1, Section 5 of the South Carolina Constitution provides:

All elections shall be free and open, and every inhabitant of this State possessing the qualifications provided for in this Constitution shall have an equal right to elect officers and be elected to fill public office. (Emphasis supplied.)

In the case of [McLure v. McElroy, et al.](#), 211 S.C. 106, 120, 44 S.E.2d 101 (1947) our Supreme Court in construing the emphasized language of Article 1, Section 5 above (formerly Article 1, Section 10), held the following:

Construing our present Constitution (and following [State v. Williams, Supra](#), 20 S.C. 12, to the extent of its authority), we think its meaning is that all officers constitutional and statutory, and whether elected or appointed must be qualified electors, . . .

The same conclusion was reached in [Lee v. Clark, et al.](#), 224 S.C. 138, 145, 77 S.E.2d 485 (1953).

In light of the foregoing, it is the conclusion of this office that a director of the Public Service Authority is a public officer and, therefore, under the decisions of our Supreme Court in [McLure v. McElroy, Supra](#), and [Lee v. Clark, Supra](#),

must be a qualified elector before he can be appointed to serve as a director of the Public Service Authority. Therefore, inasmuch as an alien cannot become a qualified elector in the State of South Carolina, it is the opinion of this office that an alien cannot be appointed to serve as a director of the South Carolina Public Service Authority. I hope that the foregoing sufficiently answers the question which you have posed and if I can be of any additional assistance to you in this regard, please do not hesitate to contact me.

*2 With kind regards, I am
Very truly yours,

Ellison D. Smith, IV
Assistant Attorney General

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