



ALAN WILSON  
ATTORNEY GENERAL

March 11, 2020

Tyler R. Turner, Esq.  
Turner Caudell  
914 Richland Street, Ste. A-101  
Columbia, SC 29201

Dear Mr. Turner:

As legal counsel to the governing boards of several public charter schools throughout South Carolina, you are requesting an opinion of this Office regarding whether an active duty military serviceperson can fulfill the residency requirement to serve as a board member of a South Carolina public charter school as provided for in section 59-40-50(B)(9). You inform us that the individual has been stationed in South Carolina for nine years, owns a home in this state, pays property taxes in this state, and has children enrolled in the charter school. You also say that this individual's primary residence is in the state of Texas.

#### LAW/ANALYSIS

As we have stated in many prior opinions, this Office is not empowered to investigate or determine factual questions.<sup>1</sup> However, we can provide you with the applicable law. Section 59-40-50(B)(9) of the South Carolina Code of Laws provides:

(B) A charter school must . . . .

(9) consist of a board of directors of seven or more individuals with the exact number specified in or fixed in accordance with the bylaws. Members of a board of directors may serve a term of two years, and may serve additional terms. A choice of the membership of the board must take place every two years. Fifty percent of the members of the board as specified by the bylaws must be individuals who have a background in K-12 education or in

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<sup>1</sup> See Op. S.C. Atty. Gen., 1989 WL 406130 (April 3, 1989) (“[b]ecause this Office does not have the authority of a court or other fact-finding body, we are not able, in a legal opinion, to adjudicate or investigate factual questions.”)

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business, and the bylaws of the charter school also must provide for the manner of selection of these members. In addition, at least fifty percent of the members of the board as specified by the bylaws must be elected by the employees and the parents or guardians of students enrolled in the charter school. Parents or guardians shall have one vote for each student enrolled in the charter school. All members must be residents of the State of South Carolina. A person who has been convicted of a felony must not be elected to a board of directors. If the board of directors consists of an odd number of members, the extra member must be an individual who has a background in K-12 education or in business . . .

S.C. Code Ann. § 59-40-50(B)(9) (1976 Code, as amended) (emphasis added).

You are asking if this active duty military serviceperson satisfies the residency requirement in section 59-40-50(B)(9) to serve as a board member of a South Carolina public charter school. The South Carolina Constitution has certain requirements concerning eligibility for office, which includes: “[n]o person may be popularly elected to and serve in any office in this State or its political subdivisions unless he possesses the qualifications of an elector . . .” S.C. Const. art. VI, § 1.

Similarly, our State Constitution requires that “[n]o person shall be elected or appointed to any office in this State unless he possess the qualifications of an elector . . .” S.C. Const. art. XVII, § 1.

Section 7-5-120 provides for the qualifications of an elector or registered voter. One of the qualifications is that an individual “is a resident in the county and in the polling precinct in which the elector offers to vote . . .” S.C. Code Ann. § 7-5-120 (1976 Code, as amended). Section 7-1-25 explains that “[a] person's residence is his domicile.” S.C. Code Ann. § 7-1-25 (1976 Code, as amended). According to the statute, “[d]omicile’ means a person's fixed home where he has an intention of returning when he is absent. A person has only one domicile.” *Id.* Furthermore, the statute provides that “[f]or voting purposes, a person has changed his domicile if he (1) has abandoned his prior home and (2) has established a new home, has a present intention to make that place his home, and has no present intention to leave that place.” *Id.*

Section 7-1-25 also lists eleven nonexclusive factors to consider when determining an individual’s intent regarding his domicile for voting purposes:

- (1) a voter's address reported on income tax returns;
- (2) a voter's real estate interests, including the address for which the legal residence tax assessment ratio is claimed pursuant to Section 12-43-220(C);
- (3) a voter's physical mailing address;
- (4) a voter's address on driver's license or other identification issued by the Department of Motor Vehicles;
- (5) a voter's address on legal and financial documents;
- (6) a voter's address utilized for educational purposes, such as public school assignment and determination of tuition at institutions of higher education;
- (7) a voter's address on an automobile registration;
- (8) a voter's address utilized for membership in clubs and organizations;
- (9) the location of a voter's personal property;
- (10) residence of a voter's parents, spouse, and children; and
- (11) whether a voter temporarily relocated due to medical care for the voter or for a member of the voter's immediate family.

Id.

Our State Supreme Court has explained that residency or domicile is a mixed question of law and fact and that an individual's intent is controlling:

The residence of a person is a mixed question of law and fact; and the intention of that person with regard to the matter is deemed the controlling element of decision. His intention may be proved by his acts and declarations, and perhaps other circumstances; but when these, taken all together, are not inconsistent with the intention to retain an established residence, they are not sufficient in law to deprive him of his rights thereunder, for it will be presumed that he intends to continue a residence gained until the

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contrary is made to appear, because inestimable political and valuable personal rights depend upon it.

Clarke v. McCown, 107 S.C. 209, 92 S.E. 479, 480 (1917).

To serve as a board member of a South Carolina public charter school pursuant to section 59-40-50(B)(9), the military serviceperson referred to in your letter must meet the qualifications of an elector or registered voter, which includes being a resident. His residency is a mixed question of law and fact and is determined primarily by his intent. In order to have changed his residence or domicile to South Carolina, this individual must have abandoned his residency in Texas. He must have established a new home in South Carolina and have the intent to make South Carolina his home and not to leave. His intent as to his domicile can be established with the use of the nonexclusive factors located in section 7-1-25. We note again that this Office cannot determine this military serviceperson's residence as we do not have the authority to investigate or determine factual questions. Op. S.C. Atty. Gen., 1989 WL 406130, supra.

It is worth mentioning, however, that the Servicemembers Civil Relief Act<sup>2</sup> guarantees military personnel residency in the state in which they resided prior to military service:

For the purposes of voting for any Federal office (as defined in section 30101 of Title 52) or a State or local office, a person who is absent from a State in compliance with military or naval orders shall not, solely by reason of that absence--

- (1) be deemed to have lost a residence or domicile in that State, without regard to whether or not the person intends to return to that State;
- (2) be deemed to have acquired a residence or domicile in any other State; or
- (3) be deemed to have become a resident in or a resident of any other State.

50 U.S.C.A. § 4025.

### CONCLUSION

To serve as a board member of a South Carolina public charter school pursuant to section 59-40-50(B)(9), the active duty military serviceperson referred to in your letter must meet the qualifications of an elector or registered voter, which includes being a resident. His residency is

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<sup>2</sup> 50 U.S.C.A. § 3901 et seq.

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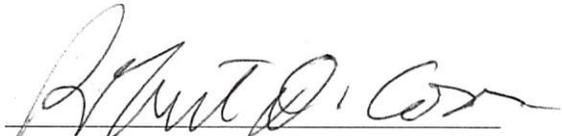
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Sincerely,



Elinor V. Lister  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General