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Subject: Charleston County School Board

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Q. Whether a school board member may be removed for residing outside of the district to which he was elected?

Pursuant to Article XVII, Section 1 of the State Constitution, "No person shall be elected or appointed to any office in this State unless he possesses the qualifications of an elector …".

With regard to qualified elector: Courts have held that the phrase, "qualified elector," means "registered elector," and no one who has not been registered to vote (and has thus met the requirements to be a qualified elector) can hold a public office—either elected or appointed. See *Mew v. Charleston & Savannah Ry. Co.*, 55 S.C. 90, 32, S.E. 828 (1899); *Blalock v. Johnston*, 180 S.C. 40, 185 S.E. 51 (1936).

With regard to being registered to vote: Section 7-5-120 of the South Carolina Code of Laws sets forth the qualifications for registered voters, including residency in the county and in the polling precinct in which the elector offers to vote.

With regard to determining residency: The courts have found that the question of one's residence is a mixed question of fact and law. Section 7-1-25 provides that a person's residence is his domicile and sets forth qualifications for the determination of a domicile for purposes of voting. Courts have found that the intention of the individual is the controlling element to determining residency. See *Clarke v. McCown*, 107 S.C. 209, 92 S.E. 479 (1917) (where one eats, sleeps, or has his washing done). Further, courts have held one's domicile to be the place where a person has his true, fixed and permanent home and principal establishment to which he has an intention of returning whenever he is absent. See *O'Neill's Estate v. Tuomey Hospital*, 254 S.C. 578, 583-584, 176 S.E.2d 527 (1970).

With regard to procedure: Due to the fact-intensive nature of analyzing one's residency, an Attorney General's Opinion has held that only a court could remove an individual from office, having first determined that the residency requirement has not been met. To bring the matter before the court, a declaratory judgement could be commenced, but there may be other appropriate actions as well. See Opinion for the Honorable Larry A. Martin, July 27, 1987.

With regard to an officer's service: An Attorney General's Opinion has held that an individual – whose residency has not been properly determined – would most likely be deemed a de facto officer, who possesses the office in good faith and whose acts will be

considered valid unless or until a court should declare the acts void or remove the individual from office. See Opinion for the Honorable Larry A. Martin, July 27, 1987.

Q. Whether the Governor is authorized to remove a school board member in violation of Article XVII, Section 1?

The Governor has no inherent power to suspend or remove public officials from office—she only has the power given to her by the Constitution or statutes of this state. See *State ex rel. Lyon v. Rhame*, 92 S.C. 455, 75 S.E. 881, 882 (1912).

A school board member is a public official and, more specifically, is considered to be an officer of a political subdivision; however, a school board member is not a county or state officer. See Attorney General's Opinion, March 30, 1983.

Generally, the Governor only has the constitutional power to suspend an officer of the state or political subdivision upon indictment for a crime of moral turpitude. See Article VI, Section 8 of the State Constitution.

Note – The Governor has broader power to remove county and state officers who are guilty of malfeasance, misfeasance, incompetency, absenteeism, conflicts of interest, misconduct, persistent neglect of duty in office, or incapacity. See 1-3-240. However, school districts are not considered county offices, and therefore, this power would not apply to school district members.

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