



ALAN WILSON  
ATTORNEY GENERAL

March 1, 2024

Lewis J. Swindler, Jr.  
Director  
South Carolina Criminal Justice Academy  
5400 Broad River Road  
Columbia, SC 29212

Dear Director Swindler:

We received your letter requesting an Attorney General's opinion regarding section 23-23-60(B)(5)(b) of the South Carolina Code (Supp. 2023). Specifically, you ask whether the factual scenario set forth in your letter would establish South Carolina residency sufficient to obtain a South Carolina driver's license and be certified as a law enforcement officer. You presented the following factual scenario:

The officer admitted he split time living in South Carolina and Georgia; his wife lives in Georgia, and he spends several nights a week/weekend with her; the other nights he spends at a friend's residence in South Carolina; he does not have a record of lease payments and is not on the lease; the officer possesses a valid South Carolina driver's license; his personal vehicle is registered in South Carolina; he pays property taxes on his personal vehicle in the appropriate county; his bank account uses the same South Carolina address; and his federal and state tax returns use the South Carolina address.

#### **Law/Analysis**

With limited exception, "No law enforcement officer employed or appointed on or after July 1, 2022, by any public law enforcement agency in this State is authorized to enforce the laws or ordinances of this State or any political subdivision thereof unless he has been certified as qualified by the [South Carolina Law Enforcement Training Council], . . ." S.C. Code Ann. § 23-23-40(A) (Supp. 2023).

All city and county police departments, sheriffs' offices, state agencies, or other employers of law enforcement officers having such officers as candidates for

certification shall submit to the director [of the South Carolina Criminal Justice Academy], for his confidential information and subsequent safekeeping, the following . . . evidence satisfactory to the director that the candidate is a person of good character. This evidence must include, but is not limited to . . . evidence satisfactory to the director that the candidate holds a valid current state driver's license with no record during the previous five years for suspension of driver's license as a result of driving under the influence of alcoholic beverages or dangerous drugs, driving while impaired (or the equivalent), reckless homicide, involuntary manslaughter, or leaving the scene of an accident.

S.C. Code Ann. § 23-23-60(B)(5)(b) (Supp. 2023). This Office has previously opined that a candidate for certification as a law enforcement officer under this section, except for correctional officers, must have a valid South Carolina driver's license. Op. S.C. Att'y Gen., 2006 WL 3199990 (S.C.A.G. October 19, 2006).

The South Carolina Department of Motor Vehicles (SCDMV) may only issue a state driver's license to South Carolina residents.<sup>1</sup> S.C. Code Ann. § 56-1-40(7) ("The Department of Motor Vehicles may not issue a motor vehicle driver's license to or renew the driver's license of a person . . . who is not a resident of South Carolina."). "The Department of Motor Vehicles may require every applicant to submit acceptable evidence when applying for or renewing a driver's license, beginner's permit, or identification card that proves the applicants . . . principal residential address; . . ." S.C. Code Ann. § 56-1-90(A)(5) (Supp. 2023). SCDMV form MV-93 sets forth the documents that can be used to show proof of a South Carolina address; these include, but are not limited to, state or federal tax records, a current letter of employment or payroll stub/statement, and vehicle registration.

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<sup>1</sup> We note section 56-1-40(7) of the South Carolina Code (2018 & Supp. 2023) provides the term "resident of South Carolina" includes, "all persons authorized by the United States Department of Justice, the United States Immigration and Naturalization Service, or the United States Department of State to live, work, or study in the United States on a temporary or permanent basis who present documents indicating their intent to live, work, or study in South Carolina. These persons and their dependents are eligible to obtain a motor vehicle driver's license or have one renewed pursuant to this provision. A driver's license issued pursuant to this item to a person who is not a lawful permanent resident of the United States shall expire on the later of: (1) the expiration date of the driver's license applicant's authorized period of stay in the United States; or (2) the expiration date of the driver's license applicant's employment authorization document. However, a driver's license issued pursuant to this item is valid for at least one year but not more than eight years from the date of its issue. Under this provision, a driver's license valid for not more than four years must be issued upon payment of a fee of twelve dollars and fifty cents. A driver's license that is valid for more than four years must be issued upon payment of a fee of twenty-five dollars. In addition, a person pending adjustment of status who presents appropriate documentation to the Department of Motor Vehicles shall be granted a one-year extension of his driver's license which is renewable annually; . . ."

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However, the question of residency is a mixed question of law and fact. Op. S.C. Att’y Gen., 1995 WL 803330 (S.C.A.G. March 8, 1995) (citing Clarke v. McCown, 107 S.C. 209, 92 S.E. 479 (1917)). In Clarke v. McCown, the Supreme Court of South Carolina held the intent of a person is the controlling element in determining residency.

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 contrary is made to appear, because inestimable political and valuable personal rights depend upon it. . . . That a man does not live or sleep or have his washing done at the place where he has gained a residence, or that his family lives elsewhere, or that he engages in employment elsewhere are facts not necessarily inconsistent with his intention to continue his residence at that place and when they are opposed by his oath, and that is corroborated by indisputable circumstances, as in this case, showing that it was not his intention to change his residence, the facts and circumstances stated become legally insufficient as evidence upon which he may be deprived of the rights to which he is entitled by reason of the residence gained.

Clarke, 107 S.C. at 213-14, 92 S.E. at 480-81. This Office is unable to issue an advisory opinion to determine facts. As we have stated in prior opinions, “[b]ecause this Office does not have the authority of a court or other fact-finding body, we are not able to adjudicate or investigate factual questions.” Op. S.C. Att’y Gen., 2006 WL 1207271 (S.C.A.G. April 4, 2006) (alteration in original) (quoting Op. S.C. Att’y Gen., 1989 WL 406130 (April 3, 1989)). Therefore, because it would involve a determination of facts, we cannot render an opinion as to whether the factual scenario set forth in your letter would establish South Carolina residency sufficient to obtain a South Carolina driver’s license and be certified as a law enforcement officer.

As to the sufficiency of the evidence required to establish that a candidate holds a valid South Carolina driver’s license, section 23-23-60(B)(5)(b) provides it must be “satisfactory” to the director of the South Carolina Criminal Justice Academy. When interpreting a statute, the primary goal is to determine the General Assembly’s intent. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.”). “[I]n ascertaining the intent of the [L]egislature, a court should not focus on any single section or provision but should consider the language of the statute as a whole.” In re Hosp. Pricing Litig., King v. AnMed Health, 377 S.C. 48, 59, 659 S.E.2d 131, 137 (2008). “When a statute’s terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning.” Sloan v. Hardee,

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371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). “When interpreting a statute, the Court must read the language in a sense which harmonizes with its subject matter and accords with its general purpose.” Allen v. S.C. Pub. Emp. Ben. Auth., 411 S.C. 611, 616, 769 S.E.2d 666, 669 (2015). Section 23-23-60(B)(5)(b) is silent as to what specific evidence should be presented to the director and therefore, we believe a court would find the language of this section grants the director discretionary authority to determine what evidence establishes a candidate holds a valid South Carolina driver’s license.

### Conclusion

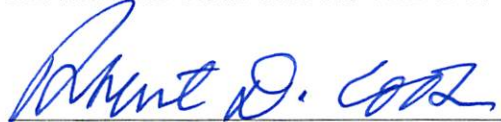
We believe a court would find section 23-23-60(B)(5)(b) grants the director of the South Carolina Criminal Justice Academy discretionary authority to determine what evidence establishes a candidate holds a valid South Carolina driver’s license. However, because it would involve a determination of facts, we cannot render an opinion as to whether the factual scenario set forth in your letter would establish South Carolina residency sufficient to obtain a South Carolina driver’s license and be certified as a law enforcement officer. You may wish to consult with the South Carolina Department of Motor Vehicles to determine whether a specific candidate meets the residency requirements to obtain a South Carolina driver’s license.

Sincerely,



Elizabeth McCann  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General