

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2016CP4005431

Robert Gantt

Samuel J Selph

Edward White

Marjorie Johnson

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Toal

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

ORDER ATTACHED

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
<u>N/A</u>		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Signature Redacted

Judge Code

2758

Date

10-10-16

For Clerk of Court Office Use Only

This judgment was entered on the 10 day of Oct, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 11 day of Oct, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Michael H. Montgomery

S. Jahue Moore

William M. Spillane

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court

Signature Redacted

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

ROBERT GANTT AND)
EDWARD K. WHITE,)

CIVIL ACTION NO. 2016-40-CP-5431

Plaintiffs,)

v.)

SAMUEL J. SELPH as Director, and)
MARJORIE JOHNSON, ADELL)
ADAMS, E. PETER KENNEDY, SYLVIA)
HOLLEY and JANE EMERSON as the)
Members of the BOARD OF VOTER)
REGISTRATION AND ELECTIONS)
OF RICHLAND COUNTY, THE)
BOARD OF VOTER REGISTRATION)
AND ELECTIONS OF RICHLAND)
COUNTY, and KIM MURPHY,)

**ORDER ON ACTION FOR
DECLARATORY JUDGMENT**

Defendants.)

RICHLAND COUNTY
CLERK
2016 OCT 10 PM 2:52
JEROME L. PROSSER
C.D.P. & G.S.

Initials

This action seeking a declaratory judgment as to the application of Act 326 of 2002 to the candidacy of Defendant Kim Murphy was before the Court for a bench trial on October 6, 2016 at the Kershaw County Courthouse. At the call of the case, Plaintiffs, Robert Gantt and Edward K. White were present and represented by Michael H. Montgomery of the Richland County Bar. Samuel J. Selph was present on behalf of himself as Director and the Board of Voter Registration and Elections of Richland County and was represented by William M. Spillane of the Richland County Bar. Kim Murphy was present and was represented by S. Jahue Moore, Sr. of the Lexington County Bar. This is an election controversy as to whether an individual candidate for the Board of Trustees of Richland-Lexington School District 5, Defendant Kim Murphy, is properly on the ballot as a resident of Richland County.

BACKGROUND

Plaintiffs' Declaratory Judgment Action seeks to disqualify defendant Kim Murphy ("Murphy") as a Candidate for election to a seat reserved for a Richland County Resident on the Board of Trustees for School District Five of Lexington and Richland Counties ("District 5") on the grounds that she fails to meet the qualifications of Act 326 of 2002 §9, which requires that "three trustees must reside in Richland County and four must reside in Lexington County." Murphy filed with the Richland County Election Commission as a candidate for a Richland seat on the Board. Plaintiffs aver that Murphy resides in Lexington County and therefore is not statutorily qualified to be elected from or serve as a representative in the Richland County seat on the Richland Lexington School District 5 Board of Trustees ("District 5"). Plaintiffs further seek a declaration compelling the defendants in their official capacities as Director and members of the Richland County Board of Voter Registration and Elections ("Board of Elections") to remove Murphy from the November 8, 2016 ballot because she is not qualified to seek or serve in the office for which she is currently running.

Initials

Plaintiffs Robert Gantt ("Gantt") and Edward K. White ("White") are both members of the District 5 Board elected from Richland County. Plaintiff Robert Gantt ("Gantt") is the current Board Chair. He holds a Richland seat and is running for re-election as a Richland County representative. Murphy is running against him, seeking to unseat him and replace him on the District 5 Board.

The question presented to the Court is simple: Is Murphy a resident of Richland County as she is required to be by Act 326 of 2002?

After hearing the testimony of the witnesses and an extensive review of the pleadings, filed memoranda, the record before the Board of Voter Registrations and Elections stipulated to

by the parties and consideration of motions, memoranda, briefs, exhibits in evidence, affidavits, testimony, and the argument of counsel, the Court hereby finds as follows:

FINDINGS OF FACT

The facts in this case have been developed from the record of a hearing before the Richland County Board of Voter Registration and Elections in a companion action where the parties agreed to incorporate the record into this action, *Gantt and White v. Richland County Board of Voter Registration and Elections*, Civil Action No.: 2016-40-5132; together with maps, documents and additional testimony and exhibits presented at the bench trial on October 6, 2016, including the stipulated testimony of Murphy's expert witness and the live testimony of seven additional witnesses. The issue before the Court is application of Act 326 and the statutes governing the county lines and precinct lines to the facts in the record. The facts are as follows:

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1. This Court has both personal and subject matter jurisdiction over this case. On September 29, 2016, the parties entered an on-the-record agreement to convert a prior mandamus action to a declaratory judgment action by the filing of an Amended Complaint and request for declaratory judgment regarding the candidacy of Murphy and the withdrawal of the petitions for mandamus and for appeal. All parties agreed to accept service of these amended pleadings and agreed to a hearing date of October 6, 2016.

2. As members of the Board of Trustees of School District Five of Lexington and Richland Counties and qualified electors in Richland County, Gantt and White have standing to raise the question of Murphy's eligibility to run and serve based upon the location of her residence. Furthermore, as the candidate against whom Murphy has filed to run, Gantt has standing to challenge her eligibility.

3. Murphy lives at 154 Old Laurel Lane, Chapin, South Carolina, 29036.

4. Murphy has lived in the residence at that address since approximately the year 2000.

5. Murphy's husband, D. Jay Murphy, acquired the property on which the residence is located in 1997.

6. At the time the property was acquired a survey was performed by Lucius D. Cobb. That survey was titled "Final Subdivision Plat of Laurel Springs" and was recorded in both Lexington and Richland Counties in April, 2007.

7. A dashed line appears on the Cobb plat which is noted as "APPROX. COUNTY LINE".

8. The Cobb plat also includes a "LOCATION MAP" where the county line is shown in a significantly different position than it is shown on the survey. The county line shown on the location map passes through Rocky Ford, a point on the statutory description of the County Lines of Lexington and Richland County. Cobb testified and his original draft plat reflects that he originally relied on the Wessinger/Counts plat. Cobb listed the county line used in his original plat as derived from "the U.S. Geological Map 'Chapin, S.C.' dated 1971." He further noted that

The County line as shown hereon was delineated by using U.S. G.S. map "Chapin, S.C." dated 1971, and a plat of Richland County by W.A. Counts and J.C. Wessinger dated Nov. 25, 1921, as described in book of boundaries of existing counties, section 4-3-460, at page 126 and 127.

The statute's verbiage forms the cornerstone of the Wessinger/Counts plat (although the plat is off 1° from what is cited in the statute). That plat shows the County line in a location that appears consistent with the County line shown on the location map. Both an examination of the location map and Mr. Cobb's testimony place Murphy's residence in Lexington County had Mr. Cobb's original county line designation been used.

9. Mr. Cobb testified that when he went to file the plat, individuals at the Lexington County Planning Commission instructed him to relocate the approximate county line on his plat to a location consistent with the tax parcel maps that were then being used by Lexington and Richland Counties. At the time that the final Cobb plat was filed, Richland County has used the line Cobb identified as the approximate county line on its GIS system for tax mapping. In order to receive approval of his subdivision plat and have it recorded, Cobb—without additional surveying—changed the location of the county line on his plat from the line specified in sections 4-3-370 and -460 of the South Carolina Code as the official boundary for Richland and Lexington Counties to the tax map boundaries for the counties.

10. Murphy later built her residence on the property. Again, apparently relying upon the approximate county line as specified in the recorded Cobb plat, she determined that she was in Richland County and obtained a building permit from Richland County.

11. After the residence was built under a Richland County permit, the improvement was included by the Richland County Assessor as property in Richland County pursuant to its records.

12. The Richland County GIS map (tax map) places Ms. Murphy in Richland County. Ms. Murphy paid (and continues to pay) taxes on her residence and vehicles registered at the 154 Old Laurel Lane, Chapin SC 29036 address and receive other services from Richland County based upon the inclusion of her residence in Richland County for tax purposes.

13. It is unclear who drew the lines for the Richland GIS maps or what information was relied upon in reaching the coordinates in these maps. However, Liz McDonald, Richland County Assessor, testified that the IT department draws the Richland GIS maps. She also testified that Richland and Lexington Counties' assessors have a "gentlemen's agreement" to use

the tax map GIS lines as the location of the county lines for tax purposes. This agreement is not in writing and has not been approved by the county councils for either county.

14. Murphy registered to vote in Richland County based upon her belief that her residence was located in Richland County. She registered in the Spring Hill precinct and voted in elections from 2000 to 2014.

15. In 2004, Ms. Murphy ran for a seat representing the Richland County portion of the District on the District 5 Board against Mr. Gantt and others. She lost that election.

16. In 2010, Ms. Murphy ran for a seat representing the Richland County portion of the District on the District 5 Board from Richland County and was elected.

17. Each time Ms. Murphy ran for office, the Board of Voter Registration and Elections accepted her candidate's application as a resident of Richland County.

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18. In the fall of 2012, acting pursuant to budget proviso 80A.20 in the S.C. General Appropriations Act for Fiscal Year 2012–2013 (Act No. 288), the Office of Research and Statistics of the Budget and Control Board¹ ("Division"), the body then charged with keeping official records of voting precinct and the location of county lines, ran a routine screening of voter precinct assignment to ensure that voters were assigned to the correct precincts. During that screening, the residence at 154 Old Laurel Lane was flagged as being in the incorrect precinct.

19. Murphy served on the District 5 Board until she was removed for cause pursuant to *S.C. Code Ann.* §59-19-60 on March 29, 2013 after the Board determined that she was not a resident of Richland County, but rather a resident of Lexington County and therefore did not meet the residency requirements imposed by S.C. Act No. 326 of 2002, §9.

¹ As a result of the restructuring of State Government, that office subsequently became the Revenue and Fiscal Affairs Office of the State of South Carolina.

20. Murphy never sought a stay of the Board's action removing her for cause.

21. Murphy left the Board and did not return to her seat as a board trustee after March 29, 2013.

22. Murphy appealed the Board's administrative action to the circuit court.

23. The Circuit Court Judge tried the matter *de novo* pursuant to *S.C. Code Ann.* §59-19-560. At the conclusion of that proceeding, the Court upheld the decision of the District 5 Board removing Murphy finding, *inter alia*, that: "since Appellant was elected from Richland County, but in fact resides in Lexington County, under the statutes of South Carolina, she does not meet the requirements of Act No. 326 of 2002, §9 to be a Board trustee."

24. Murphy appealed that decision, but did not seek a stay of the Court's Order.

25. Mapping of political boundaries in South Carolina is the statutory responsibility

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Initials of the South Carolina Revenue and Fiscal Affairs Office ("RFAO") which is the successor to the South Carolina Office of Research and Statistics. RFAO has several divisions. These divisions include the Mapping and Census section, which includes several distinct sub-sections including the Office of Precinct Demographics, the Geodetic Survey, Digital Cartography and Census.

26. The Office of Precinct Demographics is charged by the General Assembly to maintain the official maps and descriptions of precincts and to serve as the authority for verifying official precinct information for the counties of South Carolina.

27. The Geodetic Survey is charged by the General Assembly to maintain, survey and plat the official county and state boundaries.

28. *S.C. Code Ann.* §7-7-465 (2016) defines the voting precincts in Richland County. That statute provides that RFAO delineates the official precinct boundaries. It provides, *inter alia*, "The precinct lines defining the precincts provided in subsection (A) are as shown on the

official map prepared by and on file with the Revenue and Fiscal Affairs Office designated as document P-79-15 and as shown on copies of the official map provided to the Board of Voter Registration and Elections of Richland County by the Revenue and Fiscal Affairs office.”

29. RFAO has reviewed the official maps which it maintains as to the location of the residence at 154 Old Laurel Lane, Chapin, South Carolina 29036.

30. RFAO concluded that the residence at 154 Old Laurel Lane, Chapin, South Carolina is located wholly within the boundaries of the Chapin Precinct in Lexington County. No portion of the residence is located within the boundaries of the Springhill Precinct in Richland County. The residence is located hundreds of feet inside the Chapin precinct.

31. In 2013, RFAO's predecessor advised the Richland County Voter Registration and Election Commission of the fact that the residence at 154 Old Laurel Lane, Chapin South Carolina was not located in the Springhill precinct. In each case RFAO provided documents and reference to the official maps maintained by their office reflecting not only the precinct assignment, but House, Senate and County Council Districts. In none of these official maps was the residence at 154 Old Laurel Lane located in a Richland County voting precinct or district.

32. The South Carolina Geodetic Survey has also performed research and surveys which clearly demonstrate that the residence at 154 Old Laurel Lane, Chapin SC 29036 is located wholly within Lexington County. The residence is located more than 0.1 miles northwest of the county line in Lexington County. Mr. David Ballard, a registered land surveyor, and the director of the geodetic survey's boundary program, testified during the trial. Mr. Ballard testified about his on-the-ground review of the location of Rocky Ford a key survey location point on the line between the two counties—and his retracement and verification of its location from historical surveys referenced in S.C. Code Ann. §§ 4-3-370 and 4-3-460

(2016). Mr. Ballard testified that he had measured and surveyed relevant portions of the lines shown on the annexation plats relating to the area of Murphy's residence including annexation maps and plats surveyed October 1910 by C. W. Wannamker and F.W. Frederick, a proposed annexation map Surveyed December 4, 2012 by T. C. Hanby, H.S. Haynsworth and Z. L. Mobley, a plat prepared October 14, 1921 prepared by Counts and Wessinger and an annexation plat, completed on November 25 1921, by W. A. Counts and J. C. Wessinger, surveyors as well as other information necessary to accurately locate and verify the location of Rocky Ford as referenced in the statute.

Mr. Ballard testified that he was able to obtain closure of these surveys within reasonable degrees of professional certainty and, in fact, in several instances, the handheld GPS confirmed the coordinates previously established for Rocky Ford exactly. After confirming the location of Rocky Ford, Mr. Ballard made the necessary calculations to correct the true north and elevations to confirm the statutory bearings and then was able to map the statutory county line to the Murphy property and determine that her residence was approximately 1000 feet inside Lexington County, away from the Richland County line. Based upon the distances and the accuracy of the information developed, Mr. Ballard opined to a reasonable degree of professional certainty that it was not necessary to do a complete survey to confirm the location of the property located at 154 Old Laurel Lane, Chapin S.C., the residence was conclusively in Lexington County. He also opined that the 1-degree difference in the Wessinger/Counts plat would not make a difference as to the question of whether Ms. Murphy is a resident of Richland or Lexington County. No other surveyor who testified was able to demonstrate the field work to verify an opinion accurately locating Ms. Murphy's residence. This is particularly significant because Lucius Cobb's original plat prior to being corrected to match the tax parcel maps also placed the Murphy residence

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inside Lexington County. Mr. Cobb's original draft of his plat was also the result of extensive fieldwork, and it located Rocky Ford where Mr. Ballard located this key monument. Mr. Ballard testified that Ms. Murphy's residence is located in and she is a resident of Lexington County.

33. Ronnie Tyler, Defendant Murphy's expert agrees that the Code of Laws contains the correct county line, but contends that the line has not been surveyed properly over the years. He stated that the 1-degree difference in the Wessinger/Counts plat translates to moving the county line by 164 feet. However, since Tyler's report the state geodetic survey office has undertaken to re-survey the line. Mr. Tyler did not conduct a survey in the field.

34. Leroy J. Harrell, Mapping Manager for the Richland County Assessor's office, testified that the line shown on the county maps was "our best estimate" and that his office generally would yield to the knowledge and experience of the state geodetic survey. Mr. Harrell did not conduct a survey in the field.

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35. Elizabeth M. McDonald, Richland County Assessor, testified that there was an informal agreement among the assessors not to change tax map information where it would affect a county of residence until the Geodetic Survey completed the resurvey and certification of the County line using the process provided by the General Assembly in *S.C. Code Ann.* §27-2-105 (2016).

36. Plaintiffs followed the process outlined in the statute by making their challenge to Murphy's standing as a qualified elector utilizing a written petition as required by *S.C. Code Ann.* §7-5-230(A). The Richland County Voter Registration and Election Commission held a hearing on August 30, 2016 on the Appellants' separate petitions to disqualify Murphy.

37. The Lexington County tax maps show 154 Old Laurel Lane being located within Lexington County.

38. The Richland County tax maps show 154 Old Laurel Lane being located within Richland County.

39. The Richland County GIS maps show 154 Old Laurel Lane as being located within a Lexington County House District.

40. The Richland County GIS maps show 154 Old Laurel Lane as being located within a Lexington County Senate District.

41. The official state precinct maps show 154 Old Laurel Lane as being located within the Chapin Precinct in Lexington County.

42. S.C. Code Ann. § 4-3-370 (2016) establishes the boundaries of Lexington County.

It reads:

Lexington County is bounded on the northeast and east by Richland County; on the southeast by Orangeburg and Calhoun Counties, from which it is divided by Beaver Creek; on the Southwest by Aiken County, from which it is separated by the north fork of the Edisto River to the mouth of the southern branch of Chinquepin Falls Creek and then by said creek to a point where it intersects the line drawn from Silver Bluff, on the Savannah River, to the mouth of Rocky Creek, on Saluda River; on the northwest by Saluda County, from which it is separated by a line drawn from Silver Bluff, on Savannah River, to the mouth of Rocky Creek, on the Saluda River; and by Newberry County, from which it is separated by a line beginning at a point in Broad River, on the Fairfield-Lexington County line, about .25 of a mile below Peak, and running thence S. 40[degrees] W. to a point on the west bank of Broad River; thence S. 40[degrees] W. 1956 feet to an oak; thence S. 46[degrees] 40' W. 2410 feet to a stone on the public road; thence S. 41[degrees] W. 1143 feet to a stake; thence S. 32[degrees] 30' W. 9568 feet to a stake on a branch; thence down the run of the branch to a stake; thence S. 45[degrees] W. 575 feet to a stake; thence N. 86[degrees] 30' W. 3782 feet to a pine; thence S. 26[degrees] 30' W. 3650 feet to a stake; thence S. 53[degrees] 30' W. 4990 feet to a point on the Columbia, Newberry and Laurens Railroad; thence S. 73[degrees] 30' W. 2613 feet to a maple in a branch; thence S. 68[degrees] 30' W. 2180 feet to a stake near a negro church; thence N. 77[degrees] 30' W. 5577 feet to a stake just west of the public road, near Little Mountain; thence S. 28[degrees] W. 20850 feet to Camping Creek, near the mouth of Stevens Creek; thence up the run of Camping Creek to the old Newberry-Lexington County line; thence southwesterly with the old Newberry-Lexington County line to Saluda County on Broad River. Less however, that territory transferred to Richland County by act approved March 11

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1922, to wit: all that certain piece of land containing 8900 acres, or 14 square miles, situate in the northeastern part of Lexington County on the Broad River, and being bounded and delineated as follows, to wit: beginning at a point on said Broad River, and running S. 41[degrees] W. 82.51 chains to a stake, thence turning and running S. 32.5[degrees] W. 160.65 chains to a stake, thence running along a creek which empties into Wateree Creek 42.24 chains to a stake, thence running to the point where said creek joins Wateree Creek 71.51 chains, **thence running along said Wateree Creek 94 chains, thence turning and running S. 23[degrees] E. 142.50 chains to a point in Slice Creek known as Rocky Ford, thence turning and running northerly along Slice Creek 164 chains,** thence turning and running easterly along Wateree Creek 305.00 chains to the point of entrance of Wateree Creek and Broad River, thence turning and running in a northwesterly direction along Broad River 410 chains, said piece of land being bounded on the west by Newberry County, on the south and southwest by Lexington County, on the south by Richland County, and on the east and north by the Broad River, being more particularly known as the plat of said property, completed on November 25 1921, by W. A. Counts and J. C. Wessinger, surveyors, said plat being filed in the office of the Secretary of State. And less that territory transferred to Newberry County by act approved May 12 1953, to wit: all of that certain territory or portion of Lexington County embraced within the following lines and boundaries, to wit: beginning at a point of the intersection of Lexington County-Saluda County-Newberry County lines at Saluda River; thence N. 22[degrees] 30' E. 17710 feet to Camping Creek; thence in a general southeastern direction along Camping Creek to confluence of Saluda River; thence in a northwesterly direction along Saluda River to point of beginning, being more particularly lined and described on a plat of said territory by the Columbia Engineering Company, completed November 1 1952, said plat being filed in the office of the Secretary of State.

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[emphasis added]

reads:

43. S.C. Code Ann § 4-3-460 establishes the boundaries of Richland County. It

Richland County is bounded on the north by Fairfield County, from which it is separated by new boundary lines set forth and specifically described in the location and boundary of Fairfield County; on the east by Kershaw County and Sumter County from which it is separated by the Wateree River; on the south by Calhoun County; on the west by Lexington County, from which it is separated by a line beginning on the Congaree River where the counties of Lexington and Richland meet on the southern division thereof, and running thence with the Congaree River to where the confluence of the Broad and Saluda Rivers unite to form the Congaree, and following the thread of Saluda River about two and one-half miles to a concrete boundary marker; thence in a northwesterly direction upon the circumference of a circle having Lexington courthouse as its center, with

a radius of not less than eight miles and a deflection of 1[degrees] 21' for every one thousand feet, to a concrete boundary marker on the eastern boundary line of the town of Irmo; thence along the boundary line of the town of Irmo to the northeast corner of the town; thence west along the northern boundary of the town of Irmo 2,260 feet to a stake located thereon; thence along the circumference of the circle first described 11,360 feet to a stake; then N. 42[degrees] 30' W. 878 feet; thence west 5,000 feet to a stake; thence S. 85[degrees] W. 5,000 feet to a stake; thence S. 80[degrees] W. 5,541 feet to a stake; thence N. 37[degrees] 28' W. 10,618 feet to a stake; thence S. 85[degrees] W. 750 feet to a pine; thence N. 34[degrees] 45' W. 10,491 feet to a stake; thence N. 22[degrees] E. 914 feet to a stake; thence N. 37[degrees] 5' W. 1,313 feet to a stake; **thence N. 13[degrees] 45' E. 2,597 feet to a stake; thence N. 56[degrees] 35' E. 3,920 feet to a point on Rocky Ford on Wateree Creek; thence north, northeast and east along the Wateree Creek** to where it empties into Broad River. To the above-described area of Richland County is to be added all that territory transferred from Lexington County by act approved March 11 1922, to wit: all that certain piece of land containing 8,900 acres, or 14 square miles, situate in the northeastern part of Lexington County on the Broad River, and being bounded and delineated as follows, to wit: beginning at a point on the Broad River, and running S. 41[degrees] W. 82.51 chains to a stake; thence turning and running S. 32.5[degrees] W. 160.65 chains to a stake; thence running along a creek which empties into Wateree Creek 42.24 chains to a stake; thence running to the point where said creek joins Wateree Creek 71.51 chains; thence running along Wateree Creek 94 chains; thence turning and running S. 23[degrees] E. 142.50 chains to a point in Slice Creek known as Rocky Ford; thence turning and running northerly along Slice Creek 164 chains; thence turning and running easterly along Wateree Creek 305.00 chains to the point of entrance of Wateree Creek and Broad River; thence turning and running in a northwesterly direction along Broad River 410 chains, said piece of land being bounded on the west by Newberry County, on the south and southwest by Lexington County, on the south by Richland County, and on the east and north by the Broad River, being more particularly known as the plat of said property, completed on November 25 1921, by W.A. Counts and J.C. Wessinger, surveyors, said plat being filed in the office of the Secretary of State.

[emphasis added]

44. Both statutes include Rocky Ford as a landmark with a bearing and distance to other identified points.

45. Ms. Murphy's residence is, according to testimony, within approximately 1000 feet from Rocky Ford.

46. The location of Rocky Ford is established, monumented and not in doubt. It was

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established and recognized before any controversy arose over the location of the Murphy residence.

47. During cross-examination, Murphy acknowledged that she had previously communicated to her expert witness that if the Rocky Ford point used by SFAO is the point in statute that "I believe I would be in Lexington County."

48. Because the location of Rocky Ford is established and the statutes defining the county boundaries contain specific bearings from that point which can be plotted to locate the county line near Murphy's property, the line is neither ill-defined, unmarked or poorly marked.

49. The residence at 154 Old Laurel Lane is located inside of Lexington County. That location is established by clear and convincing evidence.

CONCLUSIONS OF LAW

Kim Murphy is not a resident of Richland County.

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The starting point of the analysis of this issue is S.C. Act No. 326 of 2002, §9. That act only permits a resident of Richland County to run for the particular seat Ms. Murphy seeks on the School Board (one of the seats allocated to Richland County). Act No. 326 clearly states: "[n]otwithstanding another provision of law, in Richland-Lexington School District 5: (1) three trustees must reside in Richland County and four must reside in Lexington County." The Court finds that since Murphy seeks office in Richland County, but in fact resides in Lexington County, under the law of South Carolina, she does not meet the requirements of Act No. 326 of 2002, to serve as a Board trustee and because she does not meet the requirements to serve, she is not qualified to run for the office and her name should be removed from the ballot. Not only does Murphy's residence in Lexington County deprive her of the qualification for the office, but her failure to reside in Lexington County under a mandatory residence requirement specially imposed by the General Assembly directly affects the rights and interests of the public and is a

matter of significant public interest. The public has a right to have only legally qualified candidates on the ballot.

In adopting S.C. Act 326 of 2002, §9, the General Assembly transferred one of seven Board seats from Lexington to Richland counties – in fact this was the only portion of the Act that passed Justice Department “preclearance” under the Voting Rights Act. The purpose of the move was to accommodate the changing balance of population in the two portions of the District to comply with Constitutional one-man-one-vote requirements for local representation, whereby, “[i]f voters residing in oversize districts are denied their constitutional right to participate in the election of state legislators, precisely the same kind of deprivation occurs when the members of a city council, school board, or county governing board are elected from districts of substantially unequal population.” *Avery v. Midland County Tex.*, 390 U.S. 474,480-81 (1968). The very purpose of the Act was to assure Richland County the constitutionally required level of representation on the Board. “Area representation is a familiar form of local representative government. . . . The purpose is to give each and every part of the city or town representation.

Such legislative plan is modeled in accordance with the national and state systems. It is designed to render a council a popular branch and keep it more directly in touch with the people.” *Gaud v. Walker*, 53 S.E.2d 316, 327 (S.C. 1949) (quoting, McQuillen, *Municipal Corporation*, 2d Ed., Volume 2, §598).

So, to be able to run for the seat she seeks, Ms. Murphy must reside in Richland County. Plaintiffs seek a declaration as to whether she lives in Richland County as she contends or in Lexington County as they allege. The question then presented to the Court is in which county is her residence at 154 Old Laurel Lane located? In South Carolina, the General Assembly alone has the power to set or change a county boundary. S. C. Const Art. VII §§7, 13 and Art VIII, §2.

Counties also depend on self-generated or self-maintained maps such as tax parcel maps for various county purposes. However,

In the absence of statutory authority, county may survey its boundaries for the temporary guidance of its officers, but a survey so made is not binding on the adjoining county nor on the public generally.

20 *C.J.S.* Counties §29. Location of a disputed boundary line is a question of fact. *Williams v. Moore*, 733 S.E. 2d 224, 230 (S.C. App. 2012). Neither Richland County nor Lexington County can establish or move a county boundary – the boundaries must be set by the General Assembly. Accordingly, errors in an unauthorized map cannot change a legislated boundary line. The Code of Laws states the county line, so the question becomes: where is that line located in relation to Ms. Murphy's residence? The facts in this case establish that both Lexington and Richland Counties have developed and maintained maps for the internal use and purposes that while they are designed to approximate the county line between them are subject to a number of informal agreements regarding property taxation such that the tax maps are neither reliable nor compelling evidence of the actual location of the County line.

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Initials

The State Fiscal Affairs Office and its predecessor the Office of Research and Statistics have the responsibility to identify the actual location of the county line as defined by the General Assembly. The Geodetic Survey is a part of this office. Statutes enacted by the General Assembly give the Geodetic Survey the responsibility and authority to coordinate mapping activities within the State to insure consistent, accurate, and reliable county and state maps for a myriad of purposes. (*See, e.g.* S. C. Code Ann. § 27-2-85, § 27-2-9 and § 27-2-10). When the question arose, the Geodetic Survey not only undertook to verify the location of the monument in statute (Rocky Ford), its employees did so using multiple techniques which are scientifically recognized to provide the correct result. They followed and traced the relevant portions of the

old surveys to confirm the location of Rocky Ford and converted and verified the statutory bearings to ensure accuracy. They then made a determination to a level of precision necessary to provide professional confidence in their determination. Their location of the county line has been made in a reliable, verifiable and repeatable manner. While it is not the certified plat of the county line which will ultimately be developed pursuant to *S.C. Code Ann.* §27-2-105 (2016) which the defendants argue is the only acceptable way to make this determination, it is a determination that is compelling evidence necessary to resolve this question.

The boundary of Richland County is set by the General Assembly in *S.C. Code Ann.* §4-3-460 (2016). The boundary of Lexington County is described in *S.C. Code Ann.* §4-3-460 (2016). Both statutory descriptions reference "a point in Slice Creek known as Rocky Ford" which is shown on "the plat of said property, completed on November 25, 1921 by W. A. Counts and J.C. Wessinger Surveyors, said plat being filed in the office of the Secretary of State", *Id.* Rocky Ford is a common geographic feature used to establish the boundary between the counties in the area of Murphy's residence. The statutes describing Richland and Lexington Counties contain language that the county line runs "S.23° E. 142.5 chains to a point in Slice Creek known as **ROCKY FORD**; thence turning and running northerly along Slice Creek 164 chains" [emphasis added]. The maps presented demonstrate a consistent placement of Rocky Ford on surveys and maps which establish the fact that Murphy's residence is clearly and unambiguously located in Lexington County. The testimony of David Ballard of the South Carolina Geodetic Survey compellingly demonstrates the consistent placement of Rocky Ford and the efforts taken to confirm that placement. His professional actions and work are documented by his testimony and establish the accuracy and credibility of his conclusions. Mr. Ballard visited the site numerous times and used the tools available to him to verify the location of the county line. The

testimony of Lucius Cobb as to how the "approximate county line" came to be located on the filed subdivision plat as well as his placement of the county line on the plat prior to making changes to match the tax mapping parcels at the request of Lexington County provides further compelling evidence locating Murphy's property in Lexington County. Most importantly, where the Cobb plat passes the county line through Rocky Ford, Murphy's residence is located in Lexington County. The testimony of these two professionals provides clear and convincing evidence that the Murphy residence is located in Lexington County and not Richland County. The fact that Mr. Ballard and the geodetic survey have located and documented the location of Rocky Ford at a place identified by the ancient plats, and that Mr. Cobb's plat corroborates this location when the County Line shown on his plat line runs through Rocky Ford compels the Court to conclude that the residence has been properly located in Lexington County.

Likewise, the testimony of Messrs. Rainwater and Roberts convincingly establishes additional evidence which clearly demonstrates that Murphy lives in Lexington County: her house is located in the Chapin precinct; it is located in Lexington County House and Senate Districts, and it was previously shown in Lexington County. Moreover, they testify that the residence at 154 Old Laurel Lane, Chapin, S.C. is located in Lexington County based upon the U.S. Census Block database. Conversely, only the tax maps in Richland County locate the Murphy residence in Richland County. Neither Mr. Rainwater, Mr. Roberts or Mr. Ballard expressed any doubt as to the location of the Murphy residence. Each was certain that the residence was located within Lexington County. Moreover, Mr. Cobb agreed that based upon his original county line, the residence would be located in Lexington County. Mr. Tyler's criticism of the location is based upon a contention that the county line has not been surveyed properly over the years. He stated that the difference in the Wessinger/Counts plat translates into

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moving the county line by 164 feet. However, since Tyler's report, the state geodetic survey office has undertaken to re-survey the lines. Ballard's testimony addressed this issue.

The testimony of the County officials generally demonstrates that in their administration of their internal affairs the accurate location of the County line is not of paramount import. Rather they seem to be most interested in preserving the status quo until such time as the geodetic survey completes a recertification of the county line.

S.C. Code Ann. §7-7-465 (2016) establishes Richland County voting precincts. *S.C. Code Ann. §7-7-465(B)* provides that:

The precinct lines defining the precincts provided in subsection (A) are shown on the official map prepared by and on file with the Revenue and Fiscal Affairs Office designated as document P-79-15 and as shown on copies of the official map provided to the Board of Voter Registration and Elections of Richland County by the Revenue and Fiscal Affairs Office.

[emphasis added]. The official map referenced in the statute was placed into evidence and the testimony surrounding that map demonstrates that the location of Murphy's residence is not within the Spring Hill Precinct of Richland County. This official map clearly establishes that the residence at 154 Old Laurel Lane is not located in the Spring Hill Precinct or in any legislative, senate or county council district representing the Spring Hill Precinct.

The overwhelming evidence in the record in this case is that Murphy lives in Lexington County. The official state precinct maps establish that Kim Murphy's residence is located in the Chapin Precinct in Lexington County. Her residence is located hundreds of feet inside of Lexington County on every identified official State record. When he extended the statutory bearings from Rocky Ford pursuant to statute in both directions as he described in his testimony, Mr. Ballard confirmed that Ms. Murphy's home is in Lexington County. The US Census tract maps, the work of the South Carolina Geodetic Survey and the district maps established by the

General Assembly for the South Carolina House and Senate further demonstrate that she is a Lexington County resident.

Murphy wishes to argue against all manner of authorities that she lives in Richland County because it carries her residence on the County tax maps and she pays taxes there. She submitted property and vehicle tax bills to demonstrate that she is a resident of Richland County. She testified that she believes that she is a resident of Richland County. She submitted voting and registration records showing that she has been registered to vote and, in fact, has voted in Richland County during the entire time that she has resided at 154 Old Laurel Lane. She also endeavors to assert that there is some kind of dispute as to the location of the county line solely because Richland County has improperly located her residence inside its borders when her residence is located in Lexington County. One reason her residence is located on the Richland County GIS and she is taxed in Richland County may be because she (or her husband's) filed a plat wherein the County line was based on tax map parcels and obtained a building permit in Richland County. Murphy endeavors to argue that the counties have agreed that she is a resident of Richland County and that their decision should be a binding determination of her residence.

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Initials

The clear evidence in the record is that Murphy's residence is located in Lexington County. The agreements between the Counties are not official - there is no evidence that they have been approved by either County Council - but even if they were, the Counties cannot by agreement, laches, or any other way change or alter the County line. Only the General Assembly is authorized to do move, change or alter a county line.

All in all, every survey/map and the testimony (except the Richland GIS map and Cobb's second map) place Ms. Murphy in Lexington County. These include the state geodetic survey maps and census maps (used to create House and Senate districts and precinct lines), and most of

the expert testimony. Even Tyler stated that the statute contains the correct coordinates. He merely took issue with the surveying that had been done and the impact of the 1-degree difference between the language of the statute and the Wessinger/Counts plat. Thus, based on the entirety of the evidence and testimony, I conclude that Ms. Murphy is a resident of Lexington County, and cannot be considered on the Richland County ballot in the upcoming election.

Even if the boundary has been misidentified by the counties, errors in an unauthorized map cannot change a legislated boundary line. Something as important to the public as the qualifications of a candidate cannot be bound by a county's determination of its geographical boundary where that determination is inconsistent with state statutes. Accordingly, the Court finds that neither the county planning nor tax maps are binding on the Court or determinative of the actual, statutory boundary.

Murphy argues that her status as an "elector" registered by the officials of the Board of Elections and Voter Registration of Richland County is dispositive of her residence. She also argues that the *ad valorem* taxation of the residence and her vehicles by Richland County prove that she is a Richland County resident. Both of these factors are matters of Richland County's administration of its internal duties, and not within the purview of this matter. While they also may reflect Murphy's intentions and perhaps even her domicile, they do not establish her residence in Richland County. Our Courts have construed the term resident when used in a statute for eligibility for elected office strictly as "actual physical residence ... rather than mere domicile." *Ravenel v. Dekle*, 265 S.C. 364, 218 S.E. 2d 521 (1975).

Murphy also argues that Plaintiffs and the counties are estopped to deny that she is a resident of Richland County. Murphy neither pled nor proved the elements of estoppel.

Murphy also pleads that the line has been established by acquiescence. Her claim is

based upon the informal agreement between the counties. Since only the General Assembly can constitutionally alter a county line, the county map is not binding on the General Assembly and generally estoppel or acquiescence is not an available remedy against the state.

ORDER

Based upon the foregoing findings of fact, analysis and conclusions of law, the Court orders that:

(1) Kim Murphy is a resident of Lexington County, not Richland County. Her residence at 154 Old Laurel Lane, Chapin SC 29036 is located in Lexington County.

(2) Kim Murphy is a resident of the Chapin Precinct in Lexington County and not a resident of the Spring Hill Precinct in Lexington County pursuant to the official precinct maps of the State of South Carolina.

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Initials (3) Kim Murphy does not meet the requirements to hold the office of Board trustee representing Richland County under S.C. Act 326 of 2002, §9 because she does not physically reside in Richland County.

(4) Kim Murphy is not a qualified candidate to appear on the 2016 Ballot for the Office of Board Trustee representing Richland County on the School Board of School District Five of Lexington and Richland Counties as she fails to meet the "must reside in Richland County" requirement of S.C. Act No. 326 of 2002, §9.

(5) Kim Murphy's name cannot legally appear on the Richland County Ballot for the Richland County Seat for the Board of Trustees of School District Five of Lexington and Richland Counties and her name should be removed from the 2016 ballot.

(6) The Defendant Board of Voter Registration and Elections for Richland County is Ordered to remove Murphy's name from the 2016 ballot for the Office of School Board Trustee

from Richland County on the School Board for School District Five of Lexington and Richland Counties as she fails to meet the statutory qualifications to seek that office.

AND IT IS SO ORDERED.

#23

Signature Redacted

Honorable Jean Hoefler Toal
Circuit Court Judge
Fifth Judicial Circuit

Columbia, South Carolina
October 10, 2016.

STATE ELECTION COMMISSION
1122 Lady Street, 5th Floor
Columbia, SC 29201

November 16, 2016

Immediately following the State Board of Canvassers meeting

Present: Billy Way, Jr., Chairman; Mr. Mark Benson (via teleconference); Ms. Marilyn Bowers (via teleconference); Mr. Allen Dawson (via teleconference); Ms. Nicole White; (via teleconference)

Others Present: Marci Andino, Executive Director; Kristina Catoe, Staff Attorney; Chris Whitmire, Director of Public Information and Training; Howard Snider, Director of Voter Services; Daylin Silber, Administrative Coordinator; Kim Murphy, a member of the public

COMMISSIONERS

BILLY WAY, JR.
Chairperson

MARK A. BENSON

MARILYN BOWERS

E. ALLEN DAWSON

NICOLE SPAIN WHITE

THE MEETING OF THE STATE ELECTION COMMISSION (SEC) WAS HELD PURSUANT TO THE FREEDOM OF INFORMATION ACT AND ALL REQUIRED NOTIFICATIONS WERE MADE.

Chairman Way called the meeting to order and asked if all notices of the meeting had been posted as required by the Freedom of Information Act. Ms. Andino stated that the notices had been posted.

Approval of Minutes

Chairman Way stated that the first item of business was the approval of the minutes from the October 19, 2016 (SEC) meeting.

Mr. Benson moved to approve the minutes. The motion was seconded by Ms. White. The minutes were unanimously approved.

New Business

The first item under new business was the 2017 schedule of meetings. Ms. Andino advised that there are no special elections scheduled at this time. She reminded the board that the meetings are scheduled on the third Wednesday of each month but that the dates may change if it becomes necessary.

The next item under new business was the 2016 statewide general election wrap-up. Ms. Andino advised the commission that the voter turnout in South Carolina was 68% with 2.1 million ballots cast. A record 513,711 absentee ballots were issued and approximately 500,000 were returned. Ms. Andino reported that the election went

MARCI ANDINO
Executive Director

1122 Lady Street
Suite 500
Columbia, SC 29201

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Columbia, SC 29250

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www.scvotes.org

smoothly with no major issues. She further stated that there were no significant lines, no constitutional amendments and only a few local questions on the ballots. Ms. Andino also informed the commissioners that training and technology had been provided to assist with line management. She stated that one county was unable to certify in a timely manner. Ms. Andino advised the commissioners that problem areas in the canvass and certification process will be identified and recommendations will be made to the county.

Ms. Andino reminded the commission that the deadline to file protests for federal, state offices, and multicounty offices is November 21, 2016 and ~~that~~ the deadline for appeals from county board decisions is November 28, 2016.

Old Business

The first item under old business was General Election security and emergency procurement. Ms. Andino reminded the Commission that due to accusations of rigged elections, hackings and threats of foreign countries attempting to disrupt the election, an emergency procurement was issued. Ms. Andino informed the commissioners that in order to improve security, the Agency's public facing website was moved to the Microsoft Cloud, vulnerability testing was carried out on all systems and networks, and remediation, to the extent that was possible considering the short timeframe, was also performed. The Agency will continue to follow recommendations provided by the company who conducted the vulnerability testing and provided remediation services.

Regarding information technology security updates, Ms. Andino stated that there were no additional updates to report.

In regard to the Project Vote letter, Ms. Catoe reported that resolution is still in progress. In *Guess v. State Election Commission* case, Ms. Catoe advised that the case is being continued. In *Ahmad, et.al. v. Greenville County Board of Registration and Elections and the State Election Commission*, Ms. Catoe informed that the case is being settled. The Greenville County Board of Voter Registration and Elections is to cease using a questionnaire to determine eligibility to register to vote for students attempting to register with an on-campus address.

Ms. Murphy was permitted to address the Commission regarding the county boundaries that affected her voter registration.

Chairman Way reminded everyone that the next SEC meeting is scheduled for December 21, 2016.

With no further business to be discussed, Mr. Benson moved to adjourn the meeting. Ms. White seconded the motion. The motion passed unanimously, and the meeting adjourned.

Respectfully submitted,
Daylin Silber

SECTION 7-3-20. Executive director of State Election Commission.

(A) The State Election Commission shall elect an executive director who shall be directly responsible to the commission and who shall serve at the pleasure of the commission. The executive director shall be the chief administrative officer for the State Election Commission.

(B) The executive director shall receive such compensation and employ such staff, subject to the approval of the State Election Commission, as may be provided by law.

(C) The executive director shall:

(1) supervise the conduct of county board of elections and voter registration, as established pursuant to Article 1, Chapter 5, which administer elections and voter registration in the State and ensure those boards' compliance with the requirements with applicable state or federal law or State Election Commission policies and procedures with regard to the conduct of elections or the voter registration process by all persons involved in the elections process;

(2) conduct reviews, audits, or other postelection analysis of county board of elections and voter registration, as established pursuant to Article 1, Chapter 5, to ensure those boards' compliance with the requirements with applicable state or federal law or State Election Commission policies and procedures with regard to the conduct of elections or the voter registration process by all persons involved in the elections process;

(3) maintain a complete master file of all qualified electors by county and by precincts;

(4) delete the name of any elector:

(a) who is deceased;

(b) who is no longer qualified to vote in the precinct where currently registered;

(c) who has been convicted of a disqualifying crime;

(d) who is otherwise no longer qualified to vote as may be provided by law; or

(e) who requests in writing that his name be removed;

(5) enter names on the master file as they are reported by the county boards of voter registration and elections;

(6) furnish each county board of voter registration and elections with a master list of all registered voters in the county, together with a copy of all registered voters in each precinct of the county, at least ten days prior to each election. The precinct copies shall be used as the official list of voters;

- (7) maintain all information furnished his office relating to the inclusion or deletion of names from the master file for four years;
- (8) purchase, lease, or contract for the use of such equipment as may be necessary to properly execute the duties of his office, subject to the approval of the State Election Commission;
- (9) secure from the United States courts and federal and state agencies available information as to persons convicted of disqualifying crimes;
- (10) obtain information from any other source which may assist him in carrying out the purposes of this section;
- (11) perform such other duties relating to elections as may be assigned him by the State Election Commission;
- (12) furnish at reasonable price any precinct lists to a qualified elector requesting them;
- (13) serve as the chief state election official responsible for implementing and coordinating the state's responsibilities under the National Voter Registration Act of 1993;
- (14) serve as the chief state election official responsible for implementing and enforcing the state's responsibilities under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), as set forth in the U.S.C., Title 42, Section 1973ff, et seq.; and
- (15) establish and maintain a statewide voter registration database that shall be administered by the commission and made continuously available to each county board of voter registration and elections and to other agencies as authorized by law.

(D) The State Election Commission shall publish on the commission's website each change to voting procedures enacted by state or local governments. State and local governments shall file notice of all changes in voting procedures, including, but not limited to, changes to precincts with the State Election Commission within five days after adoption of the change or thirty-five days prior to the implementation, whichever is earlier. All voting procedure changes must remain on the commission's website at least through the date of the next general election. However, if changes are made within three months prior to the next general election, then the changes shall remain on the commission's website through the date of the following general election.

HISTORY: 1962 Code § 23-31; 1967 (55) 657; 1968 (55) 2316; 1996 Act No. 466, § 2, eff August 21, 1996; 2006 Act No. 253, § 1, eff March 24, 2006; 2012 Act No. 265, § 4, eff upon preclearance approval or declaratory judgment; 2014 Act No. 196 (S.815), §§ 1, 10, eff June 2, 2014.

Code Commissioner's Note

Pursuant to the directive in 2014 Act No. 196, § 8, at the direction of the Code Commissioner, references

in this section to county election commissions or commissioners or county boards of voter registration were changed to the "Board of Voter Registration and Elections" and board members as appropriate.

Catoe, Kristina

From: Catoe, Kristina
Sent: Monday, October 10, 2016 6:22 PM
To: jake@mttlaw.com
Subject: Kim Murphy
Attachments: 20161010181408552.pdf; ATT00001.htm

Mr. Moore,

Please find attached correspondence from Marci Andino, Executive Director, to your client and all registered voters at 154 Old Laurel Lane, Chapin, SC.

Because of Judge Toal's ruling, the voter registrations at the address in Richland County have been deactivated. The deadline for registration by mail has been extended to tomorrow, October 11th. Please notify your client to complete an application for registration in Lexington County by mail for postmarking tomorrow so that she and the residents at her home can be registered to vote if they choose.

If you have any questions, please contact my office.

Kristina

Sent from my iPhone

Begin forwarded message:

From: "Kristina Catoe" <kcatoe@elections.sc.gov>
To: "Catoe, Kristina" <kcatoe@elections.sc.gov>
Subject: Message from "RNP002673BD645A"

This E-mail was sent from "RNP002673BD645A" (MP C4503).

Scan Date: 10.10.2016 18:14:08 (-0400)

**SOUTH CAROLINA
ELECTION COMMISSION**

October 10, 2016

Mr. Denis Murphy
154 Old Laurel Lane
Chapin, SC 29036

Dear Mr. Murphy:

PLEASE TAKE NOTICE that your voter registration certificate number 406712491 in Richland County has been removed from the active voter registration list pursuant to the Order on Action for Declaratory Judgment (Civil Action #2016-40-CP-5431) that concluded the property located at 154 Old Laurel Lane, Chapin, South Carolina is in Lexington County.

If you wish to register to vote in order to participate in the 2016 General Election, please note registration by mail applications must be postmarked no later than Tuesday, October 11, 2016. Voter registration by mail applications are available at scvotes.org. The deadlines for online voter registration and in-person voter registration have passed.

Sincerely,

Signature Redacted

Marci Andino

/mba

Cc: Richland County Board of Registration and Elections

COMMISSIONERS

BILLY WAY, JR.
Chairperson

MARK A. BENSON

MARILYN BOWERS

E. ALLEN DAWSON

NICOLE SPAIN WHITE

MARCI ANDINO
Executive Director

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www.scvotes.org

**SOUTH CAROLINA
ELECTION COMMISSION**

October 10, 2016

Ms. Emily J. Murphy
154 Old Laurel Lane
Chapin, SC 29036

Dear Ms. Murphy:

PLEASE TAKE NOTICE that your voter registration certificate number 406888792 in Richland County has been removed from the active voter registration list pursuant to the Order on Action for Declaratory Judgment (Civil Action #2016-40-CP-5431) that concluded the property located at 154 Old Laurel Lane, Chapin, South Carolina is in Lexington County.

If you wish to register to vote in order to participate in the 2016 General Election, please note registration by mail applications must be postmarked no later than Tuesday, October 11, 2016. Voter registration by mail applications are available at scvotes.org. The deadlines for online voter registration and in-person voter registration have passed.

COMMISSIONERS

BILLY WAY, JR.
Chairperson

MARK A. BENSON

MARILYN BOWERS

E. ALLEN DAWSON

NICOLE SPAIN WHITE

MARCI ANDINO
Executive Director

Sincerely,

Signature Redacted

Marci Andino

/mba

Cc: Richland County Board of Registration and Elections

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**SOUTH CAROLINA
ELECTION COMMISSION**

October 10, 2016

Ms. Frances A. Murphy
154 Old Laurel Lane
Chapin, SC 29036

Dear Ms. Murphy:

PLEASE TAKE NOTICE that your voter registration certificate number 470063259 in Richland County has been removed from the active voter registration list pursuant to the Order on Action for Declaratory Judgment (Civil Action #2016-40-CP-5431) that concluded the property located at 154 Old Laurel Lane, Chapin, South Carolina is in Lexington County.

If you wish to register to vote in order to participate in the 2016 General Election, please note registration by mail applications must be postmarked no later than Tuesday, October 11, 2016. Voter registration by mail applications are available at scvotes.org. The deadlines for online voter registration and in-person voter registration have passed.

Sincerely,

Signature Redacted

Marci Andino

/mba

Cc: Richland County Board of Registration and Elections

COMMISSIONERS

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Chairperson

MARK A. BENSON

MARILYN BOWERS

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**SOUTH CAROLINA
ELECTION COMMISSION**

October 10, 2016

Ms. Elizabeth Murphy
154 Old Laurel Lane
Chapin, SC 29036

Dear Ms. Murphy:

PLEASE TAKE NOTICE that your voter registration certificate number 470343289 in Richland County has been removed from the active voter registration list pursuant to the Order on Action for Declaratory Judgment (Civil Action #2016-40-CP-5431) that concluded the property located at 154 Old Laurel Lane, Chapin, South Carolina is in Lexington County.

If you wish to register to vote in order to participate in the 2016 General Election, please note registration by mail applications must be postmarked no later than Tuesday, October 11, 2016. Voter registration by mail applications are available at scvotes.org. The deadlines for online voter registration and in-person voter registration have passed.

Sincerely,

Signature Redacted

Marci Andino

/mba

Cc: Richland County Board of Registration and Elections

COMMISSIONERS

BILLY WAY, JR.
Chairperson

MARK A. BENSON

MARILYN BOWERS

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Catoe, Kristina

From: Andino, Marci
Sent: Tuesday, October 11, 2016 12:27 PM
To: Catoe, Kristina
Subject: FW: Kim Murphy Order

FYI

From: Crepes, Dean
Sent: Tuesday, October 11, 2016 12:26 PM
To: Andino, Marci <marci@elections.sc.gov>
Subject: RE: Kim Murphy Order

On the phone with her, and she is going to contact her attorney for advice on what to do.....I am trying to get her email to start communication.

From: Andino, Marci
Sent: Tuesday, October 11, 2016 11:31 AM
To: Crepes, Dean
Subject: RE: Kim Murphy Order

Do you have a way to contact her?

From: Crepes, Dean
Sent: Tuesday, October 11, 2016 11:28 AM
To: Andino, Marci <marci@elections.sc.gov>
Subject: RE: Kim Murphy Order

I have apps from back in 2014, when she thought she may be removed from Richland, can I used these if she wants to get registered in Lexington? I have proof of residency also. The ones I have all the details needed.

From: Andino, Marci
Sent: Tuesday, October 11, 2016 9:50 AM
To: Crepes, Dean
Subject: RE: Kim Murphy Order

Just so you know, we made Kim Murphy and family Inactive/Other yesterday.

From: Crepes, Dean
Sent: Monday, October 10, 2016 4:34 PM
To: Andino, Marci <marci@elections.sc.gov>
Subject: RE: Kim Murphy Order

Interesting...bet she appeals this also.

From: Andino, Marci
Sent: Monday, October 10, 2016 3:58 PM
To: Crepes, Dean
Subject: Kim Murphy Order

Dean,

Attached is the Order on Action for Declaratory Judgment in the Kim Murphy case. The order states Ms. Murphy is a resident of Lexington County.

Marci Andino
Executive Director

South Carolina State Election Commission

1122 Lady Street, Suite 500

Post Office Box 5987

Columbia, S.C. 29250

Tel: 803.734.9001

Fax: 803.734.9366

scVOTES.org



**EVERY VOTE MATTERS.
EVERY VOTE COUNTS.**

This message originates from the South Carolina State Election Commission. If you have received this message in error, we would appreciate it if you would immediately notify the South Carolina State Election Commission by sending a reply e-mail to the sender of this message. Thank you.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Kim Murphy,)
)
Petitioner,)
)
vs.)
)
Richland-Lexington School District No. 5)
by and through its Board of Trustees by)
and through Counsel to the Board of)
Trustees,)
)
Respondent.)

CASE NO. 2013-CP-40-1897

**ORDER AFFIRMING THE APPELLANT'S
REMOVAL FROM THE BOARD OF
TRUSTEES**

RICHLAND COUNTY
FILED
2014 OCT 30 PM 2:33
JEANNETTE M. ROSS
C.C.P. & G.S.

I. INTRODUCTION

This case has come before the Court pursuant to S.C. Code Ann. § 59-19-60 as an appeal by Kim Murphy (“Appellant”) from her removal from the Board of Trustees (the “Board”) for School District 5 of Lexington and Richland Counties (the “District”). Specifically, Appellant contends that she is a resident of Richland County and that her removal by the Board was unlawful. The Board maintains that it (1) provided Appellant with due process under S.C. Code Ann. § 59-19-60, and (2) that the Board had legal authority to remove Appellant from office under S.C. Code Ann. § 59-19-60.

The Court has carefully considered the pleadings and materials submitted, the oral arguments presented at the hearing held on September 11, 2014, and the relevant authorities governing this action. For the reasons set forth below, the Court affirms the Board’s decision to remove Appellant from office.

II. PROCEDURAL BACKGROUND

The Court finds the following facts regarding the procedural background of this appeal to be undisputed. Appellant resides at 154 Old Laurel Lane, Chapin, South Carolina. By law, three trustees on the Board must reside in Richland County and four trustees must reside in Lexington

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County. S.C. Act No. 326 of 2002, § 9. In November 2010, Appellant was elected to the Board of Trustees as a resident of Richland County. In October 2012, the Board Chair, Robert Gantt, received information that Appellant resided in Lexington County, not Richland County. Mr. Gantt sought a determination from the Director of the South Carolina State Budget and Control Board's Division of Research and Statistics, Bobby Bowers, concerning Appellant's residency. Mr. Bowers concluded that Appellant resided in Lexington County.

The Board then designated retired Circuit Court Judge G. Thomas Cooper, Jr. to conduct an evidentiary hearing concerning Appellant's residency and her qualifications to serve as a Board trustee and to issue findings and recommendations to the Board. The evidentiary hearing was scheduled for February 15, 2013. Appellant was provided notice of the evidentiary hearing via email and hand-delivery to her house. Appellant made an appearance on February 15, 2014, to object to the proceeding but did not otherwise attend or participate.

On March 14, 2013, Judge Cooper issued written findings and recommendations to the Board, including Appellant. Judge Cooper concluded that Appellant resided in Lexington County and that the Board had the authority to remove her from office under S.C. Code Ann. § 59-19-60. On March 19, 2013, the Board held a special meeting to receive and review Judge Cooper's findings and recommendations, as well as other evidence concerning Appellant's residency and to make a determination on her qualifications to serve on the Board. At the conclusion of the special meeting, the Board voted to remove Appellant from office pursuant to § 59-19-60.

III. STANDARD OF REVIEW

S.C. Code Ann. § 59-19-560 provides, in part, "the matter in controversy shall be tried by the circuit judge, de novo, with or without reference to a master or special referee." S.C. Code Ann. § 59-19-560; *Lexington Cnty. Sch. Dist. One Bd. of Trustees v. Bost*, 282 S.C. 32, 34, 316 S.E.2d 677, 678 (1984) (stating "the appeal to the circuit court from the decision of the County

Board of Education should be a trial de novo in which the record of proceedings below is admitted as evidence but not accorded deference. Section 59-19-560 requires the circuit judge to try these cases as equity cases.") The standard of review, therefore, is *de novo*. Thus, the Court can find facts in accordance with its view of the preponderance of the evidence and correct errors of law. *Id.*

IV. LEGAL ANALYSIS

A. Appellant is not a resident of Richland County, and therefore, not qualified to hold the office of Board trustee.

In South Carolina, the General Assembly alone has the power to set or change a county boundary. S.C. Const. Art. VII, §§ 7, 12. S.C. Const. Art. VIII, § 2. Thus, while counties depend on self-generated or self-maintained maps or surveys for various county purposes, in the absence of statutory authority, a survey is not binding on the adjoining county or the public generally. 20 C.L.S. Counties § 29. Accordingly, errors in an unauthorized map cannot change a legislated boundary line.

The boundary of Lexington County is established by S.C. Code Ann. § 4-3-370 and that of Richland County by S.C. Code Ann. § 4-3-460. Both of these statutory descriptions of the boundaries of Richland and Lexington Counties reference "a point in Slice Creek known as Rocky Ford," which is shown on "the plat of said property, completed on November 25, 1921, by W.A. Counts and J.C. Wessinger Surveyors, said plat being filed in the office of the Secretary of State." *Id.* Based on the clear and repeated statutory references to Rocky Ford, it is evident that this common geographic feature establishes the boundary between the counties in the area of Appellant's residence at 154 Old Laurel Lane, Chapin, South Carolina. Therefore, the Court finds that the consistent placement of Rocky Ford on surveys and maps unquestionably places Appellant's residence in Lexington County. The Court finds the testimony of Mr. Bowers, with the Division of Research and Statistics, S.C. Budget and Control Board, and Mr. Miller, former

Chief of the South Carolina Geodetic Survey, clear and convincing evidence that Appellant's residence is located in Lexington County and not in Richland County.

Appellant submitted the following exhibits to demonstrate that she is in fact a resident of Richland County: (1) her vehicle taxes which are paid in Richland County; (2) a subdivision layout corresponding to the residence in question where Lexington County officials approved the proposed layout using approximate county lines, suggesting the residence to be in Richland County; (3) a certified plat. Here, the Court finds the proffered evidence to be unpersuasive. First, both the subdivision layout and the survey conducted by Lucius Cobb clearly label the county boundary line as only "approximate." It is axiomatic that the survey performed by Lucius Cobb should not be considered competent proof of the actual county boundary not only because it states the county boundary line is approximate, but also because Rocky Ford, the geographic feature referenced by statute as being a feature of the boundary, is identified on the plat but the county line is not passing through the referenced boundary feature. Second, in regard to Appellant's vehicle taxes, even if the boundary has been misidentified by the counties, errors in an unauthorized map cannot change a legislated boundary line. Moreover, since the District is a subdivision of the State it cannot be bound by a county's determination of its geographical boundary that is inconsistent with state statutes. Accordingly, the Court finds that neither the county planning nor tax maps are binding on a school district or determinative of actual, statutory boundaries.

S.C. Act No. 326 of 2002, § 9 clearly states: "[n]otwithstanding another provision of law, in Richland-Lexington School District 5: (1) three trustees must reside in Richland County and four must reside in Lexington County." The Court finds that since Appellant was elected from Richland County, but in fact resides in Lexington County, under the statutes of South Carolina, she does not meet the requirements of Act No. 326 of 2002, § 9 to be a Board trustee.

B. The Board Has Legal Authority To Remove Appellant From Office Under S.C. Code Ann. § 59-19-60.

S.C. Code Ann. § 59-19-60 states:

School district trustees shall be subject to removal from office for cause by the county boards of education, upon notice and after being given an opportunity to be heard by the county board of education. Any such order of removal shall state the grounds thereof, the manner of notice and the hearing accorded the trustee, and any such trustee shall have the right to appeal to the court of common pleas, as provided in § 59-19-560.

The County Boards of Education of Lexington and Richland counties were abolished in 1994 and 1969, respectively. S.C. Act No. 601 of 1994 and S.C. Act No. 140 of 1969. The Lexington County Board of Education's powers and duties, including the power to remove school district trustees, were legislatively devolved on the respective school district boards in Lexington County, including this Board. S.C. Act No. 601 of 1994. S.C. Act. No. 140 of 1969 provides:

Any appointments, actions or duties required of the Richland County Board of Education or the County Superintendent of Education which are not specifically devolved upon the Richland County Council shall be devolved upon the council upon the effective date of this act. The Council may, in turn, delegate such actions and duties to the appropriate county or school district agency.

Thereafter, the General Assembly passed Act 610 of 1984 which states: "Richland County Council may not remove Richland County school district trustees of school districts situated in whole or in part in Richland County."

Under the Acts above, the Court finds that the Board has the statutory authority to remove a Board member for cause under § 59-19-60. It is logical, practical, and consistent with the rules of statutory construction to conclude that the Board has the authority to remove a trustee for cause. See *Brown v. County of Horry*, 308 S.C. 180, 193, 417 S.E.2d 565, 567 (1992) ("[I]t is the duty of the court to ascertain the intent of the Legislature and give it effect."); *State ex rel. McLeod v. Montgomery*, 244 S.C. 308, 136 S.E.2d 778 (1964) ("The Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish

something.”); *Joiner ex rel. Rivas v. Rivas*, 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000) (“[S]tatutes dealing with the same subject matter are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result.) *Bolton v. Doe*, 266 S.C. 344, 349, 223 S.E.2d 187, 189 (1976) (“A statute is not to be read in an atmosphere of sterility, but in the context of what actually happens when human beings go about the fulfillment of its purposes.”).

It is clear under S.C. Act No. 601 of 1994, that at a minimum the four Board members from Lexington County have the authority of a county board of education under § 59-19-60 to remove a Board member. Further, it is reasonable and in harmony with S.C. Act 610 of 1984 and the South Carolina Constitution Articles III, §27 and VI, § 9, to construe S.C. Act 610 of 1984 as also vesting this authority in the Board members elected from Richland County since the District is “in Lexington County” and the Richland County Council does not possess such authority. Construction of these statutes otherwise would result in the absurd result of four Board members having authority to remove a board member under § 59-19-60, while three others do not. *Hodges v. Rainey*, 341 S.C. 79, 91, 533, S.E.2d 578, 584 (2000) (stating “[t]he goal of statutory construction is to harmonize conflicting statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd.”). Accordingly, this Court finds that the Board has the legal authority to remove Appellant pursuant to S.C. Code Ann. § 59-19-60.

C. The Board’s Hearing Procedures Provided Appellant Due Process of Law.

Appellant also takes issue with the hearing procedure. The Court finds that Appellant was given notice of the evidentiary hearing before Judge Cooper and elected not to participate in the evidentiary hearing, except to object to the proceeding. Appellant was provided with a copy of the hearing officer’s Findings and Recommendations. Additionally, Appellant was provided with notice of the Board’s subsequent special meeting to consider her residency and qualifications to serve on the Board. Appellant attended the meeting and her counsel presented

evidence and argument to the Board for the Board's consideration. After the Board voted to remove Appellant from office pursuant to § 59-19-60, the Board issued an Order of Removal setting forth the grounds for its decision, the manner of notice, and the hearing accorded to Appellant. Therefore, the Board provided Appellant with the due process required to remove a trustee from office under S.C. Code Ann. § 59-19-60.

Moreover, substantial prejudice must be shown to establish a violation of due process. *Tall Tower, Inc. v. S.C. Procurement Review Panel*, 294 S.C. 225, 233, 363 S.E.2d 683, 687 (1987); *Felder v. Charleston County Sch. Dist.*, 327 S.C. 21, 26, 489 S.E.2d 191, 193 (1997). In regard to hearings by school boards "school board members are clothed with a presumption of honesty and integrity...in the discharge of their decision-making responsibilities." *Felder v. Charleston County Sch. Dist.*, 327 S.C. 21, 26, 489 S.E.2d 191, 193-94 (1997). In *Felder*, the South Carolina Supreme Court held that where the factual findings on the merits were supported by the record and no evidence demonstrating actual bias existed, there was no substantial prejudice. Here too, the Board's decision on the merits is fully supported by the factual record and Appellant presented no evidence of actual bias. Therefore, the Court finds Appellant was provided notice of the question about her residency and legal ability to be a Board member elected from Richland County, as well as an impartial hearing on the matter; due process requires nothing more.

Appellant further contends her removal from the Board was improper because the Board's procedures violated the Administrative Procedure Act's (APA), S.C. Code Ann. §1-23-10, et seq., requirements regarding the promulgation of rules, and the Freedom of Information Act (FOIA), S.C. Code Ann. § 30-4-10, et seq. The Appellant has not clearly asserted the basis for these claims and the Court finds the Board's action removing Appellant from office did not violate the APA or FOIA. The provisions of the APA concerning the promulgation of rules apply to State agencies and not to school boards. Section 1-23-10 (4) specifically provides that

"Regulation... does not include...policy statements or rules of local school boards." Further, S.C. Code Ann. § 59-19-60 itself gives much latitude to school boards regarding the form and manner a removal hearing, requiring only that removal from office be "upon notice and after being given an opportunity to be heard...."

With respect to the FOIA, the transcript of the special meeting of the Board on March 19, 2013 shows the meeting, including the vote to remove Appellant, was a public meeting, conducted in open session, and the agenda for the special meeting was formally approved by a public vote 6 to 1. (March 19, 2013, hearing transcript, p. 6). Accordingly, likewise, Judge Cooper in his Findings and Recommendations (at page 1) states the hearing "was properly noticed to the parties, the public, and the press...." Therefore, the Board's special meeting of March 19, 2013 and removal hearing procedures did not violate the FOIA.

Appellant also argues that the Board failed to exhaust its administrative remedies regarding the determination of her residency in Lexington County. Specifically, Appellant argues the Board should have sought a residency determination from the Richland County Election Commission pursuant to S.C. Code Ann. § 7-5-230. In *Blair v. City of Manning*, 345 S.C. 141, 546 S.E.2d 649 (2001), our Supreme Court rejected a similar argument. In *Blair*, the Supreme Court held S.C. Code Ann. § 7-5-230 inapplicable to an election protest based on a candidate's residency, because the challenge concerned an election protest not voter registration, even though both voter registration and the election protest turned on the issue of residency. Here, the Board has challenged neither Appellant's voter registration, nor protests her election, but rather contends she is no longer qualified to hold the position of Board trustee under S.C. Act No. 326 of 2002, § 9, which requires Appellant to be a resident of Richland County. Under these circumstances, including the specific requirements of Act No. 326 of 2002 §9, and §59-19-60, it is appropriate for the Board to determine whether one of its members continues to meet the legal requirements for holding the office of Board trustee.

Appellant's status as an "elector" registered by the officials of Richland County is therefore irrelevant, as is Richland County's *ad valorem* taxation of the property on which the residence is situated. Both of these factors are matters of Richland County's administration of its internal duties, and not within the purview of this appeal or the Board's determination of "cause" for removal due to failing to meet the continuing "must reside" requirement of S.C. Act No. 326 of 2002.

Finally, Appellant argues the Board should be estopped from removing her from office. Appellant has not established essential elements of an estoppel claim.

The potential elements of estoppel as related to the party estopped are: (1) conduct that amounts to a false representation or concealment of material facts or is at least calculated to convey the impression that facts are otherwise than, and inconsistent with, those that the party subsequently attempts to assert; (2) intention, or at least expectation, that such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the real facts. [Citation omitted] As related to the party claiming the estoppel, the essential elements are: (1) lack of knowledge and the means of knowledge of the truth as to the facts in question; (2) reliance upon the conduct of the party estopped; and (3) prejudicial change in position. [Citation omitted]

McDaniel v. South Carolina Department of Public Safety, 325 S.C. 405, 411, 481 S.E.2d 155, 158 (Ct.App.1996). Based on the facts before the Court, Appellant has not shown that the Board engaged in any conduct amounting to false representation or concealment regarding her residency in Lexington County or that the Board had knowledge of the fact that she resides in Lexington County prior to January 2013 when it received the correspondence from Mr. Bowers identifying her residence in Lexington, rather than Richland County. Moreover, Appellant has presented no evidence showing any reliance or prejudicial change in her position based on any representation by the Board that she was resident of Richland County. Indeed, even if such a representation were to exist, instead of being prejudiced, Appellant benefited from the apparent

misapprehension that she resided in Richland County by being permitted to be a Board trustee elected from Richland County for more than two years.

The Court, therefore, finds Appellant has not proven the Board is estopped from finding her not to be a resident of Richland County or removing her from the office of Board trustee for failing to meet the requirements of the office under SC Act No. 326 of 2002.

V. ORDER

Based on the foregoing findings of fact, analysis, and conclusions of law, the Court finds by clear and convincing evidence that (1) Appellant is a resident of Lexington County, not Richland County, and (2) Appellant does not meet the requirements and lacks the legal capacity to hold the office of Board trustee under S.C. Act 326 of 2002, § 9. The Court, therefore, affirms the Board's decision to remove Appellant from office under S.C. Code Ann. § 59-19-60.

IT IS SO ORDERED.

Signature Redacted

The Honorable DeAndrea Gist Benjamin,
Circuit Court Judge Presiding

Columbia, South Carolina
10-30, 2014