



Supervisor's Handbook on Candidate Qualifying

June 2012

**Florida Department of State
Division of Elections
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Explanation

This handbook explains the process for candidate qualifying. The information contained in this publication is intended only as a quick reference guide and is current upon publication. To the extent that this Handbook covers material beyond that contained in law or rule, the Division of Elections offers such material to Supervisors of Elections as voluntary guidelines. Supervisors of Elections may find the Handbook helpful in handling questions about the candidate qualifying process. If further assistance is necessary, Supervisors of Elections may request an advisory opinion from the Division of Elections under Section [106.23\(2\)](#), F.S.

The following statutes and rule regarding candidate qualifying should be reviewed in their entirety:

Sections [99.012](#), [99.061](#), [99.092](#), [99.0955](#), [99.096](#), [105.031](#),
and [105.035](#), F.S., and Rule [1S-2.0001](#), F.A.C.

Please direct any procedural questions to the Bureau of Election Records at 850.245.6240 or any legal questions to the General Counsel's Office at 850.245.6536. This publication is available at:

<http://soe.dos.state.fl.us/>

All other Division of Elections' forms and publications are available on the Division of Elections' website at:

<http://elections.myflorida.com>



Responsibilities of a Qualifying Officer

➤ **What is the scope of my responsibility as a qualifying officer?**

- Pursuant to Section [99.061\(7\)\(c\)](#), F.S., the filing officer performs a ministerial function in reviewing qualifying papers.

In determining whether a candidate is qualified, the filing officer shall review the qualifying papers to determine whether all items required have been properly filed and whether each item is complete on its face, including whether items that must be verified have been properly verified pursuant to Section [92.525\(1\)\(a\)](#), F.S.

The filing officer may not determine whether the contents of the qualifying papers are accurate.

- Any question as to a candidate's eligibility becomes a judicial question if and when an appropriate challenge is made in the courts. (*State ex rel Shevin v. Stone*, 279 So.2d 17 (Fla.1972) (see **Appendix A**.)



Resign-to-Run

➤ What is the “resign-to-run” law?

- The “resign-to-run” law is found in Section [99.012](#), F.S. The “resign-to-run” law essentially prohibits an elected or appointed “officer” from qualifying as a candidate for another state, district, county, or municipal public office if the terms or any part of the terms overlap with each other if the person did not resign from the office the person presently holds.

➤ As a filing officer am I responsible for enforcing the “resign-to-run” law?

- No. It is not the responsibility of the qualifying officer to ensure compliance with the “resign-to-run” law. The best practice is to inform a candidate regarding the “resign-to-run” law if you are aware that the requirements would apply to him.
- A qualifying officer **cannot**:
 - Refuse to qualify a candidate even when the officer knows that the person has not complied with the requirements of the law; or
 - Remove a candidate’s name from the ballot if the qualifying officer becomes aware after qualifying closes that the candidate has not complied with the “resign-to-run” law.
- A court must order the removal of the name of a candidate who does not comply with the “resign-to-run” law from the ballot. (Section [99.012\(5\)](#), F.S.)

➤ Are there any exceptions to the “resign-to-run” law?

- Yes. The “resign-to-run” law does not apply to (a) political party offices, or (b) persons serving without salary on an appointed board or authority. Also, portions of the “resign-to-run” law do not apply to federal officers or candidates for federal office.
 - An “officer” is a person, whether elected or appointed, who has the authority to exercise the sovereign powers of the state pertaining to an office recognized under the State Constitution or laws of the state. With respect to a municipality, an “officer” means a person, whether elected or appointed, who has the authority to exercise municipal power as provided by the State Constitution, state laws, or municipal charter. (Section [99.012\(1\)](#), F.S.)

Florida case law further explains that an “officer” is one who exercises some portion of the sovereign power, either in making, executing or administering the laws and who derives his position from a duly and legally authorized election or appointment, whose duties are continuous in nature and defined by law, not contract.

Examples of “officers” include, but are not limited to: mayors, city and county commissioners, state legislators, supervisors of elections, sheriffs, property appraisers, judges, school board members, superintendents of school, state attorneys and public defenders, municipal fire chiefs, medical examiners, and elected hospital board and airport authority members.

➤ **If an officer must resign under the “resign-to-run” law, when must the officer resign and when must the resignation take effect?**

- The resignation must be submitted in writing at least 10 days prior to the first day of qualifying for the office the person intends to seek.
 - For April qualifying, the resignation must be filed no later than **April 6, 2012**.
 - For June qualifying, the resignation must be filed no later than **May 25, 2012**.
- The resignation must take effect no later than the earlier of the following dates:
 - The date the officer would take office, if elected; or
 - The date the officer's successor is required to take office.

➤ **If a school board member will not seek re-election at the next general election and wishes to qualify to run for state representative, does the school board member have to submit a resignation under the resign-to-run law?**

- Yes. Section [100.041](#), F.S., reflects that the term of office of a state representative begins upon election for a term of two years and the term of office for a school board member begins on the second Tuesday following the general election for a term of four years. Therefore, the term as a school board member, if elected as a state representative, will not expire until two weeks after the state representative takes office. This two week overlap requires the school board member to submit a resignation under the resign-to-run law at least 10 days prior to qualifying as a candidate as a state representative.

➤ **What can an officer do if he missed the deadline for submitting the resignation 10 days prior to the beginning of the qualifying period?**

- If the officer still wishes to run for office, the officer may submit his resignation to take effect immediately or to take effect on a date prior to qualifying for office. In this situation, the officer qualifies as a non-officeholder and the “resign-to-run” law does not apply.

➤ **To whom must the resignation be submitted?**

- For **elected** district, county, or municipal officers, the resignation must be submitted to the officer before whom he qualified for the office he or she holds, with a copy to the Governor and the Department of State.
- For **appointed** district, county, or municipal officers, the resignation must be submitted to the officer or authority which appointed him or her to the office he or she holds, with a copy to the Governor and the Department of State.
- **All other officers** must submit their resignations to the Governor with a copy to the Department of State.
- Governor and Department of State contact information:

The Honorable Rick Scott, Governor
The Capitol
400 South Monroe Street
Tallahassee, Florida 32399-0001
Fax: 850.487.0801
Email: Rick.Scott@MyFlorida.com

Kristi Reid Bronson, Chief
Bureau of Election Records
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250
Fax: 850.245.6259 or 850.245.6260
Email: Kristi.Bronson@DOS.MyFlorida.com

➤ **Can the officer later revoke the resignation?**

- No, once submitted, the resignation is irrevocable.

➤ **What happens to an elected officer's term of office if he or she submits a resignation under the "resign-to-run" law?**

- Except as noted in the next paragraph, when an elected official resigns, it creates a vacancy in office to be filled by election. The election is held to fill the office for the remaining unexpired term. So, if an officer had two years left in a four-year term of office on the effective date of his resignation, persons would qualify as a candidate for the office and, if elected, would serve the two years remaining in the former officer's term.

If the officer resigning under the "resign-to-run" law occupies an elective charter county office or elective municipal office, the vacancy created by the resignation may be filled for that portion of the remaining unexpired term in the manner specified by the county or municipal charter, as applicable.

➤ **May a person qualify to run for more than one office?**

- No. Section [99.012\(2\)](#), F.S., prohibits persons from qualifying for more than one federal, state, district, county, or municipal office if the terms or any part thereof run concurrently with each other. For example: (a) a person may not qualify in Florida to run for more than more than one U.S. House of Representatives seat at a time; or (b) a person may not qualify for both a state office and a county office if the terms or any part of the two offices overlap.

➤ **Does the "resign-to-run" law apply to federal officers?**

- No. The "resign-to-run" portion of Section [99.012](#), F.S., only applies to state, district, county, and municipal officers. However, as stated in the answer to the prior question, Section [99.012\(2\)](#), F.S., prohibits persons from qualifying for more than one federal, state, district, county, or municipal office if the terms or any part thereof run concurrently with each other. Thus, a federal officer would not have to resign prior to qualifying for a state, district, county, or municipal office. For example, a U.S. Senator from Florida with two years left on his or her Senate term could qualify to run for Governor of Florida without resigning because the "resign-to-run" law does not apply to federal officers; however, the senator could not qualify for re-election to the U.S. Senate from Florida and also qualify for Governor of Florida because the terms of office would overlap.

➤ **Does the "resign-to-run" law require a state, district, county, or municipal officer to resign before running for federal office?**

- No. The "resign-to-run" law prohibits an officer from qualifying as a candidate for another state, district, county, or municipal public office if the terms or any part overlap with each other unless the officer submits a resignation from the office the person presently holds. Therefore, the "resign-to-run" law would not

preclude a sitting state, district, county, or municipal officer from qualifying as a candidate for *federal* office without resigning from the office the person presently holds as long as the officer does not also qualify for re-election to his or her present office.

➤ **How does the “resign-to-run” law relate to the “Hatch Act?”**

- The state resign-to-run law is entirely separate from the federal “Hatch Act.” The federal Hatch Act (5 U.S.C. §§ 1501- 1508) applies to executive branch *state and local employees* who are principally employed in connection with programs financed in whole or in part by loans or grants made by the United States or a federal agency.
- The Hatch Act prohibits executive branch state and local employees covered under its provisions from being a candidate for public office in a *partisan* election (i.e., an election in which any candidate represents, for example, the Republican or Democratic Party).

For example, if an employee works for a state agency and his or her principal work is in an area which is funded in part by a federal agency, then the Hatch Act would prohibit that employee from running for a partisan office. Law enforcement officers seeking to run for public office should be aware that if their law enforcement agency receives federal funding (i.e., Department of Homeland Security grants) then their candidacy for a partisan office may be subject to the Hatch Act prohibitions. The Hatch Act would not prohibit the covered employee from being a candidate in a *nonpartisan* election; however, an employee's conduct is also subject to the laws of the state and the regulations of the employing agency, so the employee should check with his supervisor, personnel office, or the agency's general counsel to determine what state or local law or agency rules or policies may apply regarding political activities.

Governors, Lieutenant Governors, mayors, elected heads of executive departments, and individuals holding elective office are specifically exempt from the Hatch Act prohibition against being a candidate for public office. So, the Hatch Act prohibits state, county, and municipal *employees* seeking public office in a partisan election, not an *elected officer* seeking re-election or election to another office.

Questions about the Hatch Act may be directed to:

Hatch Act Unit
U. S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
Phone: 800.85.HATCH or 800.854.2824 or 202.254.3650
Website: <http://www.osc.gov/hatchact.htm>

Requests for Hatch Act advisory opinions may be made by e-mail to:

hatchact@osc.gov

➤ **Who can I contact about questions concerning Florida's "resign-to-run" law?**

- Contact the Department of State, Office of General Counsel, telephone: 850.245.6536 or email: generalcounsel@dos.state.fl.us.

Qualifications for Office

➤ When must qualifications for office be met?

- Generally, the statutory oath a person is required to take upon qualifying for office refers to qualifications applicable **when the term of the office he seeks begins**. (*State ex rel. Fair v. Adams*, 139 So.2d 879 (Fla. 1962), *Davis ex rel. Taylor v. Crawford*, 116 So. 41 (Fla. 1928), *State ex rel. Knott v. Haskell*, 72 So. 651 (Fla. 1916) (**see Appendix B - DE Opinion 94-04**).

However, exceptions to this general rule exist for certain offices. For example, bar membership for county court judges and residency requirements for school board members and write-in candidates must be met at the time of qualifying.

- **Age requirements:** at the time of assuming office (**see Appendix C - DE Opinion 92-10**).
- **Bar membership for judges:**
 - Circuit Court Judge – at the time of assuming office (see cases cited above and *In re the Advisory Opinion to the Governor*, 192 So.2d 757 (Fla.1966)).
 - County Court Judge – **prior to qualifying** (see Section [34.021\(1\)](#), F.S., and *Newman v. State*, 602 So.2d 1351, Fla. 3rd DCA 1992).

NOTE: If the county has a population of 40,000 or less, the county court candidate need only be a member in good standing of the Florida Bar – no requirement for any length of bar membership ([Art. V., s. 8, Fla. Const.; s. 34.021\(1\), Fla. Stat.](#)).

- **Residency requirements:** unless otherwise provided for constitutionally, legislatively, or judicially, the residency requirement for an office must be met at the time of assuming office. (**See Appendix D.**)

EXCEPTIONS: school board and write-in candidates must meet the residency requirements **at the time of qualifying**.

➤ If I know that a candidate will not meet one or more of the qualifications for office upon taking office if elected, can I, as the qualifying officer, refuse to qualify the candidate or refuse to put the candidate's name on the ballot?

- No. A qualifying officer's duties are ministerial in nature. (Section [99.061\(7\)\(c\)](#), F.S.) Any question as to a candidate's eligibility becomes a judicial question if

and when an appropriate challenge is made in the courts. (*State ex rel Shevin v. Stone*, 279 So.2d 17 (Fla.1972) (see **Appendix A**.)

- **BEST PRACTICE:** Inform the candidate of the concerns and allow the candidate to take any necessary action.

➤ **How is residency determined?**

- A key element of residency is the intent of the individual. (**See Appendix E - DE Opinion 80-27 and Appendix F - DE Opinion 93-05.**) No single piece of evidence is decisive in determining residency. A person's legal residence is wherever a person intends to make a permanent domicile, which can be factually supported. Examples of evidence that may be considered in determining whether legal residency has been established include driver's license, tax receipts, bank accounts, homestead exemption documents, the relocation of personal effects, and the purchase or rental of property.

➤ **If I have questions about residency requirements, who should I contact?**

- Questions regarding residency that are stated in the Florida Elections Code may be addressed to the Office of General Counsel, telephone: 850.245.6536 or email: generalcounsel@dos.state.fl.us.
- Any questions regarding residency requirements not otherwise expressly stated in the Florida Election Code should be addressed to the Florida Attorney General's Office: <http://myfloridalegal.com/opinions>.

Qualifying Documents General Information

➤ **When can a qualifying officer begin accepting qualifying documents?**

- Section [99.061\(8\)](#), F.S., provides that a qualifying officer may accept and hold qualifying papers beginning 14 days prior to the first day of qualifying period.
 - For April qualifying, begin accepting paperwork on **April 2, 2012**.
 - For June qualifying, begin accepting paperwork on **May 21, 2012**.
 - Qualifying documents can be postmarked prior to these dates; however, they cannot be used for qualifying purposes if **received** prior to the above referenced dates.
- Upon receiving the documents, review them for completeness and notify the candidate of problems or discrepancies. If there are no problems, put the documents aside and on the first day of qualifying, process and update the candidate as “qualified.”

➤ **If I receive documents by mail after the close of qualifying that are postmarked prior to the last day of qualifying, do I qualify the candidate if all the paperwork is correct?**

- No. Section [99.061\(7\)\(a\)](#), F.S., provides that in order for a candidate to be qualified, all qualifying documents must be received by the filing officer by the end of the qualifying period.

➤ **What documents must a candidate submit in order to be properly qualified?**

See Rule [1S-2.0001](#), F.A.C., for a listing of current versions of qualifying forms or view them at:

<http://election.dos.state.fl.us/forms/index.shtml>

CE Forms 1 and 6 are Commission on Ethics forms, which may be found at:

<http://www.ethics.state.fl.us>

- **Partisan Office:**
 - **DS-DE 9** – Designation of Campaign Treasurer and Campaign Depository
 - **Candidate Oath/Statement of Party** (one of the following) –
 - **DS-DE 24** – Party Affiliation Candidate
 - **DS-DE 24 B** – No Party Affiliation Candidate
 - **DS-DE 24A** – Write-in Candidate
 - **CE Form 6 or 1** (as applicable) – Financial Disclosure
 - **Qualifying Fee** (unless qualifying by the petition method or as a write-in candidate)

- **Non-Partisan Office (Other than School Board and Judicial):**
 - **DS-DE 9** – Designation of Campaign Treasurer and Campaign Depository
 - **DS-DE 25** – Candidate Oath – Nonpartisan Candidate
 - **CE Form 6 or 1** (as applicable) – Financial Disclosure
 - **Qualifying Fee** (unless qualifying by the petition method or as a write-in candidate)

- **School Board:**
 - **DS-DE 9** – Designation of Campaign Treasurer and Campaign Depository
 - **DS-DE 25A** – Candidate Oath – Nonpartisan School Board Candidate
 - **DS-DE 24F** – Write-in Candidate
 - **CE Form 6 or 1** (as applicable) – Financial Disclosure
 - **Qualifying Fee** (unless qualifying by the petition method or as a write-in candidate)

- **Judicial Office:**
 - **DS-DE 9** – Designation of Campaign Treasurer and Campaign Depository
 - **Judicial Office Candidate Oath** (one of the following) –

- **DS-DE 26**
 - **DS-DE 26A** – Write-In Candidate
 - **CE Form 6** – Financial Disclosure
 - **Qualifying Fee** (unless qualifying by the petition method or as a write-in candidate)
- **Are faxed or emailed copies of the qualifying documents acceptable?**
- No. All documents must be original documents with original signatures.
- EXCEPTION:** A copy of financial disclosure form is acceptable if the candidate is an incumbent who has previously filed an original 2011 financial disclosure form with the Florida Commission on Ethics. All other candidates must file an original 2011 financial disclosure form with the qualifying officer.
- **Is the Statement of Candidate required to be filed in order to be properly qualified?**
- No. Although not required for qualifying, each candidate must file a Statement of Candidate (DS-DE 84) with the qualifying officer within 10 days after filing the appointment of campaign treasurer and designation of campaign depository. Willful failure to file this form is a violation of Chapter 106, F.S.
- **Is the Statement of Judicial Candidate required to be filed in order for a judicial candidate to be properly qualified?**
- No. Although not required for qualifying, each judicial candidate must file a Statement of Judicial Candidate (DS-DE 83) with the qualifying officer within 10 days after filing the appointment of campaign treasurer and designation of campaign depository. Willful failure to file this form is a violation of Chapter 105, F.S.
- **What do I do if a candidate does not submit all of the required documents or the documents are incomplete?**
- Section 99.061(7)(b), F.S., provides that the filing officer shall make a reasonable effort to notify a candidate of missing or incomplete documents if the documents are received *prior* to the last day of qualifying.
 - Document your efforts to contact the candidate and any conversations with the candidate.

- If the complete or correct documents are not submitted prior to the end of qualifying, the candidate is disqualified.

➤ **If a candidate is standing in line to qualify at noon, but the papers have not been accepted, do I still accept the paperwork after the end of qualifying?**

- Yes. If the candidate is in line prior to the end of qualifying, accept the paperwork. Note in the file that although the documents were time-stamped after the end of qualifying, the candidate was waiting to have the documents processed prior to the close of qualifying.

BEST PRACTICE: Have someone announce a countdown to the noon closing time for qualifying. At noon, announce that qualifying is closed and do not let anyone else come into the line after the announcement.

➤ **If a candidate comes in right before the end of qualifying and has not opened a campaign account and insists on paying the qualifying fee with something other than a campaign check, do I accept the qualifying papers?**

- Yes. A qualifying officer must put on file the documents that are submitted. However, the person would not be qualified. The qualifying fee must be paid with a check drawn on the candidate's campaign account, unless the candidate is a special district candidate. (Section [99.061\(7\)\(a\)](#), F.S.)

Candidate/Party Oath

- **The candidate oath states “print name as you wish it to appear on the ballot.” May a candidate use a nickname on the ballot?**
- A nickname may be printed along with one’s legal name if is the candidate is generally known by that name or the name is used as part of his legal name. **(See Appendix G - DE Opinions 86-06 and 09-05.)**
 - The Division of Elections requires a candidate to notify the Division of the candidate’s intent to use a nickname on the ballot. **(See Appendix H - Memo to Candidates and Affidavit.)**
- **May a candidate use description information on the ballot?**
- No. A candidate may not use descriptive information such as Dr., Reverend, Colonel, Esquire, M.D., etc., unless two persons of the same name, or whose names are so similar as to reasonably cause confusion, seek the same office.
- **On the candidate oath, may a candidate just indicate a first or last name?**
- No. Based upon the following language from DE 86-06 (**see Appendix G**), it is the Division of Elections’ interpretation that a candidate cannot designate only a first or last name as the name he desires to have written in on a ballot as a write-in candidate:

Under common law principles, not abrogated by Florida law, a name consists of one Christian or given name and one surname, patronymic or family name; therefore, the name printed on the ballot ordinarily should be the Christian or given name and surname, 29 C.J.S. Elections §161. In Florida, a person's legal name is his Christian or given name and family surname, *Carlton vs. Phalan*, 100 Fla. 1164, 131 So. 117 (1930). (*Emphasis supplied.*)

Applying the common law principles and the Florida case law, when the oath form says to print the “name,” it must be the Christian or given name and surname.

- **A candidate misspells his name on the loyalty oath or changes his mind about how the name is to appear on the ballot after the close of qualifying. If the candidate submits something in writing, do I change the way the name appears on the ballot?**
 - No. Section [99.061\(7\)\(b\)](#), F.S., states: “A candidate’s name as it is to appear on the ballot may not be changed after the end of qualifying.”
- **If the candidate oath is missing an applicable district, group or seat number, is it acceptable for qualifying?**
 - No. Section [99.061\(7\)\(a\)2.](#), F.S., requires the district, group, or seat number, if applicable.
- **If the candidate does not provide the county in which he is registered to vote on the candidate oath, is the candidate oath acceptable for qualifying?**
 - No. This information is required by Section [99.021\(1\)\(a\)1.](#), F.S.
- **If the candidate does not provide a political party on the Statement of Party, is it acceptable for qualifying?**
 - No. This information is required by Section [99.021\(1\)\(b\)1.](#), F.S.
- **If the candidate oath is not notarized, is it acceptable for qualifying?**
 - No. Section [99.061\(7\)\(a\)2.](#), F.S., requires the candidate oath to be verified under oath or affirmation pursuant to Section [92.525\(1\)\(a\)](#), F.S., which requires it to be taken or administered before an officer authorized under Section [92.50](#), F.S., to administer oaths.
- **Is the candidate oath acceptable if the notarization is incomplete?**
 - The form must be properly notarized as provided in Section [117.05\(4\)](#), F.S., in that the certificate of acknowledgement must contain:
 - Venue (state and county);
 - The words “sworn or acknowledged;”
 - Signer personally appeared before notary public at the time of the notarization;
 - Date of the notarization;

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- Type of identification the notary is relying upon in identifying the signer – person knowledge or evidence of identity;
 - Notary's official signature;
 - Notary's name typed, printed, or stamped below the signature;
 - Notary's official seal affixed below or to either side of the notary signature.
- If any of the above elements is missing, the document is not properly notarized. However, the qualifying officer must be aware of the "doctrine of substantial compliance," and apply it when applicable. **(See Appendix J and Appendix K - DE 09-01 and *Browning v. Young*, 993 So. 2d 64 (Fla 1st DCA 2008).)**

DS-DE 9 - Appointment of Campaign Treasurer and Designation of Campaign Depository

➤ If box 6 of the DS-DE 9 does not include the district, circuit, or group number, can I still accept it?

- No. Section [106.021\(1\)\(a\)](#), F.S., provides, in part, that if the candidate is running for an office which will be grouped on the ballot with two or more similar offices to be filled at the same election, the candidate must indicate for which group or district he or she is running.

- **Examples:**

- County Court Judge, **Group 3**
- County Commissioner, **District 2**

➤ If other information is missing on the DS-DE 9 is it acceptable for qualifying?

- In addition to complete information in Box 6 of the DS-DE 9, the following boxes **must** be filled out in order to accept the form for qualifying:
 - Box 2 – Candidate Name
 - Box 8 – Party or NPA (if a partisan office)
 - Box 10 – Name of Treasurer
 - Box 19 – Name of Bank Depository
 - Box 25 and 26 – Candidate Signature and Date
 - Box 27 – Treasurer Name, Signature, and Date
- Other information such as an address could be provided later but would not prevent the candidate from qualifying.

Financial Disclosure Forms

- **Qualifying occurs prior to the deadline for office holders to file their 2011 financial disclosure documents. Can I accept a copy of an incumbent's 2010 financial disclosure documents?**
- No. A candidate must file the financial disclosure statement that covers the candidate's taxable year immediately preceding the qualifying date. **(See Appendix I - CEO 82-72).** Thus, for the 2012 qualifying period, a candidate must file the 2011 financial disclosure documents.
- **Is a copy of the Form 6 Financial Disclosure acceptable?**
- A copy is acceptable only if the candidate is an **incumbent** that has previously filed an original 2011 Form 6 with the Florida Commission on Ethics. If the candidate has not filed the 2011 Form 6 with the Florida Commission on Ethics, the candidate must file an original with the qualifying officer.
 - Candidates who are non-incumbents must file an **original** 2011 Form 6 with the qualifying officer.
- **Is a copy of the Form 1 Statement of Financial Interests acceptable?**
- A copy is acceptable only if the candidate is an incumbent that has previously filed an original 2011 Form 1 with a supervisor of elections. If the candidate has not filed a 2011 financial disclosure form with a supervisor of elections, the candidate must file an original with the qualifying officer.
 - Candidates who are non-incumbents must file an **original** 2011 Form 1 with the qualifying officer.
- **Part D of the Form 6 Financial Disclosure requires a candidate to complete this portion of the form or indicate that the candidate will attach a copy of the candidate's 2011 federal income tax return. If the box is checked and the income tax return is not attached, is the form still acceptable?**
- No. If the box is checked, the candidate must attach a copy of his 2011 federal income tax return in order to be qualified. If the box is not checked, then Part D of the form must be filled out.

PART D -- INCOME

You may *EITHER* (1) file a complete copy of your 2009 federal income tax return, including all attachments, *OR* (2) file a sworn statement identifying each separate source and amount of income which exceeds \$1,000, including secondary sources of income, by completing the remainder of Part D, below.

I elect to file a copy of my 2009 federal income tax return. [If you check this box and attach a copy of your 2009 tax return, you need not complete the remainder of Part D.]

PRIMARY SOURCES OF INCOME:			
NAME OF SOURCE OF INCOME EXCEEDING \$1,000	ADDRESS OF SOURCE OF INCOME	AMOUNT	
REQUIRED IF TAX RETURN NOT ATTACHED			
SECONDARY SOURCES OF INCOME [Major customers, clients, etc., of businesses owned by reporting person--see instructions]:			
NAME OF BUSINESS ENTITY	NAME OF MAJOR SOURCES OF BUSINESS' INCOME	ADDRESS OF SOURCE	PRINCIPAL BUSINESS ACTIVITY OF SOURCE

➤ **If a candidate has a question about how to fill out the financial disclosure forms, should my staff or I try to assist the candidate?**

- No. Questions regarding how to complete Form 6 or Form 1 financial disclosure forms should be directed to the Florida Commission on Ethics at 850.488.7864 or you can direct the candidate to the Commission's website: <http://www.ethics.state.fl.us/>.

➤ **If the Form 1 or the Form 6 is not signed by the candidate, is the form acceptable for qualifying?**

- No. The form must be signed by the candidate.

➤ **If the Form 6 Financial Disclosure Form is not properly notarized, is the form acceptable for qualifying?**

- The Form 6 may be acceptable if the notarization substantially complies with the requirements of Section 117.05, Florida Statutes. **(See Appendix J - DE Opinion 09-01 and Appendix K - *Browning v. Young*, 993 So.2d. 64 (Fla. 1st DCA 2008).)**
- Please contact your attorney or the Department of State, General Counsel's office with questions regarding this issue.

Notarization

➤ **Who can notarize qualifying documents?**

- In Florida (see Section [92.50\(1\)](#), F.S.):
 - A Florida notary;
 - A Florida judge, clerk, or deputy clerk of a court of record; or
- In another state (see Section [92.50\(2\)](#), F.S.):
 - A notary or justice of the peace in that state; or
 - A judge, clerk or deputy of a court of record in that state.
- In a foreign country (see Section [92.50\(3\)](#), F.S.):
 - Judge or justice of a court of last resort;
 - foreign notary;
 - Any minister, consul general, charge d'affaires, or consul of the United States resident in such country.

Qualifying Fees/Checks

- **May I accept cash, a money order, cashier's check, or a personal check from a candidate to pay the qualifying fee?**
- No. The qualifying fee must be drawn on the campaign account.
- EXCEPTION:** A special district candidate may pay the \$25 qualifying fee using any of the above methods.
- **May I accept a cashier's check if it is drawn on the campaign account to pay the qualifying fee?**
- No. The candidate must pay the qualifying fee using a campaign check.
- **If a candidate submits a qualifying check that is less than the amount of the qualifying fee, may I accept a second check that equals the difference?**
- No. The qualifying fee must be paid with one check that is not less than the fee required. Have the candidate submit one new check for the total amount.
- **If the amount of the qualifying check is more than the qualifying fee, may I accept the check?**
- Yes. The qualifying fee has to be ***not less than*** the fee required. Therefore, a check in an amount that is more than the qualifying fee is acceptable.
- **If the qualifying check has different amounts in the numeric portion and the written portion, may I accept the check?**
- The amount in the written portion controls the value of the check. Therefore, if the amount in the written portion is not less than the qualifying fee, you may accept the check even though the written and the numeric amounts differ. (See Section [673.1141](#), F.S.)
- BEST PRACTICE:** If there is time, have the candidate provide a new check or make the correction.

➤ **If the qualifying check is signed by the candidate, but the candidate has not designated himself a treasurer or deputy treasurer, may I accept the check?**

- No. Section [106.11\(1\)\(b\)4.](#), F.S., provides that a campaign check must contain the signature of a treasurer or deputy treasurer.

➤ **If the qualifying check is not dated, may I accept the check?**

- Yes. Under Florida's Uniform Commercial Code, if an instrument is undated, its date is the date of its issue. The term "issue" means the first delivery of an instrument by the maker for the purpose of giving rights on the instrument to any person. Therefore, for purposes of qualifying, an undated check is a negotiable instrument with its date being the date it is delivered to the qualifying officer. (See Section [673.1131](#), F.S.)

BEST PRACTICE: Even though the check is acceptable, if there is time, it is best to have the candidate provide a new check.

➤ **If the qualifying check is a starter check and the candidate has not typed or hand-written "Campaign Account," or words to that effect, on the check may I accept the check?**

- As you cannot tell by looking at the "four corners" of the document that it is a campaign check, you will need verification from the candidate or treasurer that the check is drawn on the campaign account before you may accept the check for qualifying purposes.
 - If the check is hand delivered by the candidate or treasurer, ask the person if the check is a campaign check. If the person indicates that it is a campaign check, have the person write "campaign account" on the check.
 - If the candidate or treasurer is not on hand to verify that it is a campaign check, call and request something in writing from the candidate or treasurer indicating that the qualifying check is drawn on the campaign account. This needs to be provided before the close of qualifying. The Division of Elections accepts this information by fax or email as long as it contains a signature from the candidate or treasurer.

➤ **The qualifying fee is based upon the annual salary of the office as of July 1, 2011. If there is a salary change in the interval before qualifying, does this change the qualifying fee?**

- No. Regardless of whether the salary is increased or decreased, the qualifying fee is based upon what it was as of July 1, 2011.

EXCEPTION: if a salary change is made retroactive, and is therefore, in effect as of July 1, 2011, the salary would be based upon the new amount.

➤ **What are my responsibilities as a qualifying officer if the qualifying check is returned by the bank?**

- **Immediately** notify the candidate that the check was returned and that he has until the end of qualifying to pay the fee with a cashier's check purchased with funds from the campaign account.
- Document the conversation (time and date).
- If the candidate does not provide a cashier's check prior to the end of qualifying, the candidate is disqualified.

➤ **If the candidate withdraws after submitting complete qualifying papers, do I return his qualifying fee?**

- In order to have the qualifying fee returned, the candidate must withdraw **prior** to the last date to qualify. (See Section [99.092\(1\)](#), F.S.)
- Have the candidate submit the withdrawal in writing with his signature.
- The document may be mailed, hand-delivered, faxed, or emailed as long as it is signed and received prior to noon on the last day of qualifying. (See Rule [1S-2.0001](#), F.A.C.)

➤ **If the candidate dies prior to the election, do I return the qualifying fee?**

- Yes. The qualifying fee is returned to the candidate's beneficiary. The beneficiary should submit a request in writing for the return of the qualifying fee.

➤ **If the candidate submits the qualifying fee but for other reasons fails to qualify, do I return the qualifying fee to the candidate?**

- Yes. Return the check to the candidate along with a letter explaining why the candidate did not qualify.

- **If a candidate pays the qualifying fee drawn on a campaign account that was opened prior to filing the DS-DE 9, does this mean that the check is not a “properly executed campaign check” as required by Chapter [99](#) and [105](#), F.S.?**
- No. It is a violation of Section [106.021](#), F.S., but it does not disqualify the candidate.
- **If a special district candidate has opened a campaign depository and is collecting and spending money is the special district candidate required to pay the qualifying fee with a check drawn on the campaign account?**
- No. Section [99.061\(7\)\(a\)](#), F.S., provide in pertinent part, that the filing fee for a special district candidate is not required to be drawn upon the candidate's campaign account.

Reporting Qualified Candidates to the Division of Elections

➤ How do I report the names of the candidates who qualified to the Division?

- Section [99.092\(2\)](#), F.S., provides that “[t]he Supervisor of Elections shall, immediately after the last day for qualifying, submit to the Department of State a list containing the names, party affiliations, and addresses of all candidates and the office for which they qualified.”
- This information is reported using the Electronic DS-DE 80 system available through the SOE website:

<http://soe.dos.state.fl.us/>

SUPERVISOR OF ELECTIONS	
FORMS / CODES <ul style="list-style-type: none">• Petition Certification Forms• Contest Codes (4 digits)• Contest Codes (6 digits per New File Specs)	ELECTION INFORMATION <ul style="list-style-type: none">• CERTIFICATION• CANVASS• Notice of General Election
DATA ENTRY <ul style="list-style-type: none">• Enter Local Candidates• Electronic DSDE-80 Instructions• Election Night Reporting	MISCELLANEOUS <ul style="list-style-type: none">• 2008 FSASE Summer Conference Info• NASS-International Election Protocol
PUBLICATIONS <ul style="list-style-type: none">• Supervisor's Handbook on Candidate Petitions	

- You will be reporting this information at two times: once immediately after the April qualifying ends and again after the June qualifying. You will **update** this information after the primary and again after the general.
- “**Electronic DSDE 80 Instructions**” are available on the SOE website.

Distribution of Qualifying Fees

- Where are the fees that I collect from candidates distributed?
- **County Judge and School Board Candidates:**
 - 4% qualifying fees (1% election assessment and 3% filing fee) forwarded to the Florida Elections Commission. (See Section [105.031\(3\)](#), F.S.)
 - **Partisan Candidates:**
 - 1% election assessment forwarded to the Florida Elections Commission.
 - 5% fee (3% filing fee and 2% party assessment) forwarded to the state executive committee of the political party of the candidate. (See Sections [99.061\(2\)](#) and [103.121\(1\)\(b\)](#), F.S.)
 - **NPA Candidates Filing for a Partisan Office:**
 - 1% election assessment forwarded to the Florida Elections Commission.
 - 3% filing fee deposited in the general revenue fund of the county. (See Section [99.0955\(2\)](#), F.S.)
 - **Special District Candidates:**
 - \$25 filing fee deposited in the general revenue fund of the county. (See Section [189.405\(1\)](#), F.S., and **Appendix L - Department of State Memo dated April 22, 2010.**)
 - **Petition Candidates:**
 - 1% election assessment and waived petition signature verification fees (**if applicable**) disbursed by the candidate to the Supervisor of Elections and forwarded by the Supervisor of Elections to the Department of State. (See Section [106.141\(6\)](#), F.S.)
 - Send reminders to petition candidates after they become unopposed, eliminated, or elected reminding them that prior to disposing of excess campaign funds they must reimburse the waived petition fees or election assessment or both.
 - See below for a sample memo and letter to petition candidates used by the Division of Elections.

June 4, 2012



MEMORANDUM

TO: Petition Candidates
FROM: Kristi Reid Bronson, Chief
Bureau of Election Records
DATE: November [redacted], 2012
SUBJECT: Termination Reports

All candidates participating in the 2012 General Election must dispose of funds on deposit in the campaign account pursuant to the provision of Section 106.141, Florida Statutes, within 90 days of [redacted]. Therefore, your termination report must be filed using the Electronic Filing system no later than [redacted]. You are not required to close the campaign account prior to the due date; however, you must have written checks disposing of all surplus funds by this date. You may file your report at any time prior to the deadline once you have disposed of all funds.

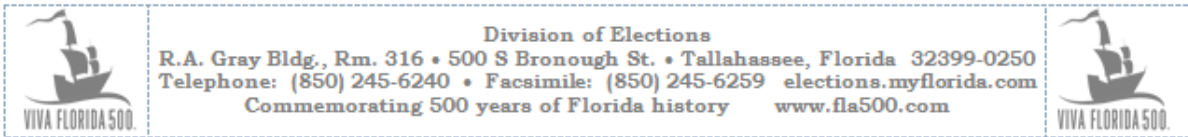
If you submitted petitions to the Supervisor of Election and did not pay to have signature on petitions because you filed an oath of undue burden, you must reimburse the county for verifying the signatures pursuant to Section 106.141, Florida Statutes. Please contact any supervisors of elections that verified your signatures to determine the amount of funds that must be reimbursed.

Prior to disposing of surplus funds, any candidate who qualified by the petition process and was not required to pay an election assessment shall reimburse the state for the waived assessment. Therefore, prior to disposing of surplus campaign funds pursuant to Section 106.141, Florida Statutes, please reimburse the Department of State for the waived election assessment.


Section 99.092(1), Florida Statutes, provides that the election assessment is one percent of the annual salary of the office sought. The election assessment for the 2012 General Election for the office of [redacted] is \$ [redacted].

If you have any questions, please contact this office at (850) 245-6240.

KRB/mah



June 4, 2012

		
	FLORIDA DEPARTMENT of STATE	
RICK SCOTT Governor		KEN DETZNER Secretary of State

██████████, 2013

NOTE: Addresses only the 1% election assessment

The Honorable ██████████,
██████████ (██████████)
██████████, ██████████ ██████████

Dear ██████████:



Section 106.141(6), Florida Statutes, provides in pertinent part that any candidate who qualified by the petition method and was not required to pay an election assessment, is required to reimburse the state for the waived assessment prior to disposing of funds pursuant to subsection 106.141(4), Florida Statutes, or transferring funds into an office account. A review of the Division's records indicate that you qualified by the petition method and did not reimburse the state for the waived assessment prior to disposing of surplus campaign funds or transferring funds into an office account.

Accordingly, please submit a check in the amount of \$ ██████████ for the waived assessment to the Department of State at your earliest convenience.

If this information is incorrect or you have any questions please call (850) 245-6240 and speak with Ms. Erin NeSmith.

Sincerely,

Kristi Reid Bronson, Chief
Bureau of Election Records

	<p>Division of Elections R.A. Gray Bldg., Rm. 316 • 500 S Bronough St. • Tallahassee, Florida 32399-0250 Telephone: (850) 245-6240 • Facsimile: (850) 245-6260 elections.myflorida.com Commemorating 500 years of Florida history www.fla500.com</p>	
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➤ **What address do I use when submitting fees to the Florida Elections Commission?**

Florida Elections Commission
107 West Gaines Street
Collins Building, Suite 224
Tallahassee, Florida 32399-1050

➤ **Are there forms to use for transmitting the various types of fees to the Florida Elections Commission?**

- Forms are available on the Florida Elections Commission's website:

<http://www.fec.state.fl.us/Election%20Assessments/index.html>

- There are three types of forms for county fee remittance:

- [County Candidate One Percent Remittance Fee Form](#) (PDF, 77kb)
- [County Judicial Candidate Fee Remittance Form](#) (PDF, 20kb)
- [County School Board Candidate Fee Remittance Form](#) (PDF, 17kb)

➤ **If I have questions regarding the forms or fees that are forwarded to the Florida Elections Commission, who should I call?**

Business Manager
Florida Elections Commission
850.922.4539



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C

Supreme Court of Florida.
STATE of Florida ex rel. Robert L. SHIEVIN, At-
torney General, et al., Relators,
v.
Richard (Dick) STONE, Secretary of State, State of
Florida, et al., Respondents,
No. 42664.

Aug. 10, 1972.

Original proceeding in mandamus to compel Secretary of State to withdraw his certification of certain individuals as candidates for House of Representatives. The Supreme Court, Dekle, J., held *inter alia*, that county constable and clerk of criminal court, whose offices were terminating by virtue of a constitutional amendment voted upon favorably by People subsequent to 'resign to run' law, acted in good faith and with good cause in not timely entering their resignations prior to time they sought candidacy for House of Representatives; accordingly, they could continue as candidates upon forth with tendering their resignations which, in accordance with statute, were not to be effective later than date upon which they would assume office if elected.

Petition for alternative writ of mandamus denied.

Boyd, J., concurred in part and dissented in part and filed opinion.

Roberts, C.J., dissented and filed opinion.

McCain, J., did not participate.

West Headnotes

[1] Courts 106 ⚡209(2)

106 Courts
106VI Courts of Appellate Jurisdiction
106VI(A) Grounds of Jurisdiction in General
106k209 Procedure in General

106k209(2) k. In Issuance of Writs.
Most Cited Cases

In proceeding wherein relators sought mandamus to compel Secretary of State to withdraw his certification of qualification of candidates for various public offices, Supreme Court would sua sponte dismiss portion of petition relating to the chairman of a city planning and zoning board as a challenger to an incumbent for state legislature, where incumbent elected to pursue her remedy in district court, which denied relief on ground that mandamus was an inappropriate remedy, and then invoked jurisdiction of circuit court, so that litigation was presently being entertained in a court of competent jurisdiction, thus ousting jurisdiction of Supreme Court. F.S.A. § 99.012; F.S.A.Const. art. 5, § 4.

[2] Mandamus 250 ⚡174

250 Mandamus

250III Jurisdiction, Proceedings, and Relief

250k174 k. Determination of Issues and Questions. Most Cited Cases

In mandamus proceeding wherein relator sought to compel Secretary of State to withdraw his certification of qualification of certain individuals as candidates for House of Representatives, Supreme Court would sua sponte dismiss portion of petition relating to a city councilman's eligibility as a candidate, where Attorney General upon oral argument voluntarily withdrew his assertions as to councilman and conceded that councilman had complied with the law, was qualified as a candidate, and should remain on the ballot. F.S.A. § 99.012; F.S.A.Const. art. 5, § 4.

[3] Elections 144 ⚡126(4)

144 Elections

144VI Nominations and Primary Elections

144k126 Nomination by Primary Election

144k126(4) k. Qualifications of Voters and Candidates. Most Cited Cases

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Sheriffs and Constables 353  **13**

353 Sheriffs and Constables

353I Appointment, Qualification, and Tenure

353I(B) Constables

353k13 k. Resignation, Suspension, or Removal. Most Cited Cases

County constable's letter of resignation which was delivered to clerk of circuit court in constable's district and which was in turn forwarded to Governor and Secretary of State was sufficient to satisfy statutory requirements, particularly in view of fact that later copies of resignation were received and accepted by Governor without complaint or objection, and constable was not disqualified as a candidate for House of Representatives by reason of fact that he held an office, term of which ran concurrently, in part, with term of office which he sought. F.S.A. §§ 15.13, 99.012(2); F.S.A.Const. art. 2, § 5(a); art. 3, § 15(d); art. 5, § 1 et seq.

[4] Elections 144  **126(4)**

144 Elections

144VI Nominations and Primary Elections

144k126 Nomination by Primary Election

144k126(4) k. Qualifications of Voters and Candidates. Most Cited Cases

County constable and clerk of criminal court, whose offices were terminating by virtue of a constitutional amendment voted upon favorably by People subsequent to "resign to run" law, acted in good faith and with good cause in not timely entering their resignations prior to time they sought candidacy for House of Representatives; accordingly, they could continue as candidates upon forthwith tendering their resignations which, in accordance with statute, were not to be effective later than date upon which they would assume office if elected. F.S.A. §§ 15.13, 99.012(2); F.S.A.Const. art. 2, § 5(a); art. 3, § 15(d); art. 5, § 1 et seq.

[5] Elections 144  **126(4)**

144 Elections

144VI Nominations and Primary Elections

144k126 Nomination by Primary Election

144k126(4) k. Qualifications of Voters and Candidates. Most Cited Cases

Municipal Corporations 268  **150**


268 Municipal Corporations

268V Officers, Agents, and Employees

268V(A) Municipal Officers in General

268k150 k. Resignation or Abandonment. Most Cited Cases

Where mayor of city, though resigning prior to time required, did not forward copies to Governor and Secretary of State until after deadline, but subsequent receipt of copies of resignation within a reasonable time was consistent with provisions of court rules for mailing of copies, with related matters of transmitting notice and with reason and logic, purpose of notice was adequately served, was within comprehension of requirement and intention of "resign to run" law, mayor was not disqualified as a candidate for House of Representatives by reason of holding an office, term of which ran concurrently, in part, with term of office which he sought. F.S.A. §§ 15.13, 99.012(2); F.S.A.Const. art. 2, § 5(a); art. 3, § 15(d), art. 5, § 1 et seq.

[6] Elections 144  **126(4)**

144 Elections


144VI Nominations and Primary Elections

144k126 Nomination by Primary Election

144k126(4) k. Qualifications of Voters and Candidates. Most Cited Cases

Although Attorney General denied timely receipt of copies of mayor's resignation by appropriate officials, namely, Governor and Secretary of State, where, without dispute, actual resignation was actually made to an effective body, namely, city commission, and copies were timely mailed, mayor was not disqualified as a candidate for House of Representatives by reason of holding an office, term of which ran concurrently, in part, with term of office which he sought. F.S.A. §§ 15.13, 99.012(2); F.S.A. Const. art. 2, § 5(a); art. 3, § 15(d); art. 5, § 1 et seq.

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[7] Elections 144  126(4)

144 Elections

144VI Nominations and Primary Elections

144k126 Nomination by Primary Election

144k126(4) k. Qualifications of Voters and Candidates. Most Cited Cases

Duty of Secretary of State under constitution and statute pertaining to qualifications of individuals to run for public office does not extend to substance or correctness or enforcement of a sworn compliance with the law, and once candidate states his compliance under oath, Secretary's ministerial determination of eligibility for office is at an end, and any challenge to correctness of candidate's statement of compliance is for appropriate judicial determination upon any challenge properly made. F.S.A. § 101.252; F.S.A.Const. art. 2, § 5(a); art. 3, § 15(d); art. 5, § 1 et seq.

*19 Robert L. Shevin, Atty. Gen., and Daniel S. Dearing, Chief Trial Counsel, Dept. of Legal Affairs, Tallahassee, for relators.

DEKLE, Justice.

The original jurisdiction of this Court has been invoked by petition for writ of mandamus directed to The Honorable Richard Stone, Secretary of State, [FN1] and various co-respondents. Relator Robert L. Shevin, Attorney General, and co-relators seek to have Respondent Stone withdraw his certification of qualification of the candidacies of the co-respondents[FN2] on the ground of failure to comply with the requirements of Fla.Stat. s 99.012, F.S.A., the so-called 'resign to run' law. We have heard all interested parties upon oral argument at a session of the Court specially called for such purpose in view of the urgency of the questions presented and the importance thereof to the people of the State of Florida in the impending elections and to the parties.

FN1. Fla.Const. art. V, s 4, F.S.A.: 'The supreme court may issue writs of mandamus . . . when a state officer, board, . . . is

named as respondent . . .'

FN2. GEORGE H. BROWN, JR., Constable, District 9, Duval County, qualified as a candidate for Member of the House of Representatives, District 20;

JOHN P. KING, Clerk, Criminal Court of Record, Duval County, qualified as a candidate for Member of the House of Representatives, District 17;

TEMPERANCE E. WRIGHT, Chairman, City of Miami Planning and Zoning Board, qualified as a candidate for Member of the House of Representatives, District 106;

FRANK PATE, Mayor of the City of Port St. Joe, qualified as a candidate for County Judge, Gulf County;

RICHARD A. PRICE, Constable, District 5, Pinellas County, qualified as a candidate for Member of the House of Representatives, District 59;

WILLIAM F. MILLER, Councilman, City of Boca Raton, qualified as a candidate for Member of the House of Representatives, District 83;

CHARLES W. BOYD, Mayor, Pembroke Pines, qualified as a candidate for Member of the House of Representatives, District 96.

WRIGHT-MILLER

[1] At the outset, this Court must sua sponte dismiss that portion of the petition relating to the Reverend Temperance E. Wright as a challenger to incumbent Gwendolyn S. Cherry for the State Legislature in Dist. 106 (Hiialeah). Mrs. Cherry elected to pursue her remedy in the District Court of Appeal, First District, on August 1, 1972. The District Court denied relief in an opinion filed August 4, 1972,

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Case No. R-422, styled State ex rel. Cherry v. Stone, Secretary of State, and Temperance E. Wright, 265 So.2d 56 (Fla.App.1st 1972), on the ground that mandamus was an inappropriate remedy. Mrs. Cherry then invoked the jurisdiction of the Circuit Court of Leon County and, since that *20 litigation is now being entertained in a court of competent jurisdiction, the jurisdiction of this Court has, necessarily, been ousted.

[2] The Attorney General upon oral argument voluntarily withdrew the assertions as to Respondent Miller and conceded that he had duly complied with the law, was qualified as a candidate for the House of Representatives and should remain on the ballot.

Respondent Richard Stone, as Secretary of State, is charged under Fla.Stat. s 15.13,[FN3] F.S.A., with 'general supervision and administration of the election laws,' which laws include Fla.Stat. s 99.012(2), F.S.A., providing as follows:

FN3. 'The secretary of state shall have general supervision and administration of the election laws, corporation laws and such other laws as are placed under his office by the legislature and shall keep records of same.'

See State ex rel. Fair v. Adams, 139 So.2d 879 (Fla.1962); State ex rel. Taylor v. Gray, 157 Fla. 229, 24 So.2d 492 (1946).

'(2) No individual may qualify as a candidate for public office who holds another elective or appointive office, whether state, county or municipal, the term of which or any part thereof runs concurrent with the term of office for which he seeks to qualify without resigning from such office not less than ten days (10) prior to the first day of qualifying for the office he intends to seek. Said resignation shall be effective not later than the date upon which he would assume office, if elected to the office to which seeks to qualify, the expiration date of the term of the office which he presently holds, or the general election day at which his successor is elec-

ted, whichever occurs earliest. With regard to elective offices, said resignation shall create a vacancy in said office thereby permitting persons to qualify as candidates for nomination and election to that office in the same manner as if the term of such public officer were otherwise scheduled to expire; or, in regard to elective municipal or home rule charter county offices, said resignation shall create a vacancy which may be filled for the unexpired term of the resigned officer in such manner as provided in the municipal or county charter. This does not apply to political party offices.'

By way of caveat we note that the 1971 session of the Legislature in 'An act relating to Transportation,' Ch. 71-373, tacked on a s 10 amending s 99.012, effective October 1, 1971, to provide as follows:

'No person who serves as a member of any appointive board or authority without salary shall be in violation of this section by reason of holding any such office.'

None of respondents is in this category.

BROWN-PRICE-KING

Respondents Brown, Price and King presently hold offices as set out Supra, footnote 2, whose terms run concurrently, in part, with the terms of the offices which they seek. Members of the House of Representatives take office upon election.[FN4] Election Day is November 7, 1972. Their present offices terminate by virtue of new Article V, Fla.Const., F.S.A., on January 1, 1973. These three respondents contend that it is unnecessary for them to resign, maintaining that:

FN4. Fla.Const. art. III, s 15(d), F.S.A.

(1) The reasons for resigning are not present in their cases, particularly in that no successors to their present posts (which are terminating) are to be elected, so that they need not step aside to make way for the election of successors;

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(2) Their present offices are not those which might be used to advance their candidacy for the Legislature;

*21 (3) It would be a useless and unnecessary act to resign in these circumstances;

(4) It would be an economic loss to the taxpayers and result in confusion to have successors appointed for the 54 days remaining from election on Nov. 7 to Jan. 1, if successful in their bids for office.

[3] Additionally, Constable Price DID in fact timely resign on June 30. Respondents Brown and King have not resigned. Relator Shevin concedes Price's tender of a letter of resignation but contends that the fact that the resignation was delivered to the Clerk of Circuit Court in Constable Price's district in St. Petersburg (who in turn forwarded it on July 5 to the Governor and Secretary) did not comply literally with the requirements of the statute. We view the resignation as sufficient in these circumstances to satisfy the statute, particularly in view of the further admitted fact that later copies of the resignation WERE received and the Governor accepted the resignation without complaint or objection.

Accordingly, Constable Price should remain on the ballot.

[4] As to Brown and King, the reasons above recited by them for not resigning where they understood the law not to apply, are cogent and persuasive as to why the 'resign to run' law should not apply in these unusual circumstances, where their offices are terminating by virtue of a new constitutional amendment (Article V) voted upon favorably by the people subsequent to the resign to run law. This superceding action by the people's vote changes the circumstances applying to these terminating offices of Brown and King. These respondents acted in good faith and with good cause in not timely entering resignations in these particular instances with the doubt which existed in their cases. They still offer to resign if deemed neces-

sary.

We accordingly hold as to Brown and King that they may continue as candidates upon forthwith tendering their resignations which (in accordance with the statute) 'shall be effective not later than the date upon which he would assume office, if elected to the office to which he seeks to qualify.' The other contingent effective times in the statute do not apply in these new circumstances brought about by Article V. These officers (respondents) could not, of course, hold more than one elective office and thus must submit resignations as outlined.[FN5]

FN5. Fla.Const. art. II, s 5(a), F.S.A.

BOYD

[5] Respondent Boyd, Mayor of Pembroke Pines (Hollywood, Florida, area) is in a position similar to Respondent Price in that he resigned prior to the time required, i.e., June 28, BUT did not forward copies to the Governor and Secretary until AFTER the July 1 deadline to resign. Subsequent receipt of copies of the resignation within a reasonable time, however, is consistent with the provisions of court rules for the mailing of copies, with related matters of transmitting notice and with reason and logic. Such transmission will not void or nullify a timely resignation. The purpose of the notice is thereby adequately served and is within the comprehension of the statute's requirement and intention with respect to this provision.

Accordingly, Respondent Boyd did satisfy the resign statute and is entitled to remain upon the election ballot as a candidate for the House of Representatives, Dist. 96.

PATE

[6] This brings us to the last of the respondents, Mayor Frank Pate of the City *22 of Port St. Joe as a candidate for County Judge, Gulf County. He as-

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serts full compliance. The Attorney General simply denies timely receipt of copies of the Mayor's resignation by the appropriate officials, namely, the Governor and Secretary of State. Without dispute the actual resignation to the Effective body (City Commission of Port St. Joe) was timely made on June 27. Copies were timely mailed (June 30).

Our same remarks above on the forwarding of the resignation to the Governor (and his acceptance of it) with copy to the Secretary apply here also. We find no deficiency which would deny this candidate (Pate) a place on the ballot.

The Attorney General urges that with the change in the statute (former s 331, Revised General Statutes (1920) in effect at the time of Davis v. Crawford, 116 So. 45 (Fla.1928)) to present s 101.252 in 1953, the Secretary is vested with the responsibility of determining 'who has qualified as prescribed by law'; ergo, the Secretary shall determine who has properly 'resigned to run'. It is not a simple administrative determination.

[7] The resign law is not Secretary Stone's to administer by such a determination, any more than the campaign spending law. His charge under the constitution and statute does not extend to the substance or correctness or enforcement of a sworn compliance with the law-with 'matters in pais', as it were. Once the candidate states his compliance, under oath, the Secretary's ministerial determination of Eligibility for the office is at an end. Any challenge to the correctness of the candidate's statement of compliance is for appropriate judicial determination upon any challenge properly made, as here.

Accordingly, the several respondents, having satisfied the resign to run statute (with Brown and King forthwith presenting their resignations as aforesaid), the grounds for issuance of the writ of mandamus to remove their names from the ballot fail. The names of respondent candidates BROWN, PRICE, KING, BOYD and PATE shall remain upon the ballot as previously and correctly heretofore certified by Respondent Secretary.

The petition for the alternative writ of mandamus is hereby denied.

In view of the expediency required within the limited time available, the privilege of filing rehearings is dispensed with and this opinion is immediately effective.

It is so ordered.

ERVIN, CARLTON and ADKINS, JJ., concur.

BOYD, J., concurring in part and dissenting in part with opinion.

ROBERTS, C.J., dissenting with opinion.

McCAIN, J., not participating BOYD, Justice (concurring in part and dissenting in part).

I concur in that part of the opinion leaving the names of Pate, Price and Boyd on the ballot. They submitted resignations in good faith efforts to comply with the law, but their letters were not sent to the Governor and Secretary of State in a timely manner. This does not comply with the letter of the law but seems to satisfy the basic legislative intent. At this late date in the election campaigns, names of candidates should not be stricken from the ballot *23 whenever there is substantial compliance with law as in these resignations.

I dissent to that part of the opinion leaving the names of Brown and King on the ballot. They have clearly violated the letter and spirit of the law since their terms as constables would end fifty-four days after they would take office as legislators, if elected. This would be a clear overlapping of the terms of office. Since they did not resign and still hold their offices, there should be no basis to retain them on the ballot.

I agree with the majority opinion disposing of Miller and Wright.

As a general rule the law contemplates the Secretary of State is to accept qualifying instruments from anyone who swears he is eligible and pays the qualifying fees. This rule should not be construed to require the Secretary of State to place the name of a

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(Cite as: 279 So.2d 17)

person on the ballot who is obviously not eligible and when such lack of eligibility is known to him as the state's chief elections officer. The burden of litigating the matter should be upon the one seeking to qualify.

The Attorney General is properly bringing this action as the Attorney for the State. Few matters in a democracy can be of greater importance to the people than those relating to qualifications of candidates for public office.

Accordingly, I concur in part and dissent in part.

ROBERTS, Chief Justice (dissenting).
The Resign-to-Run law was enacted by the legislature and its constitutionality has been upheld by this Court.

In my opinion, it is the responsibility of this Court to follow the law as written and I, therefore, must respectfully dissent from the majority view.

Fla. 1973.
State ex rel. Shevin v. Stone
279 So.2d 17

END OF DOCUMENT

DE 94-04 - March 3, 1994

**When Qualifications for Selected Offices Must Be Met; Residency
§§ 99.021 and 230.10, F.S.; DE 78-31 and DE 92-10**

TO: The Honorable Peggy Rae Border, Supervisor of Elections, Flagler County, Post Office Box 901, Bunnell, Florida 32210-0901

Prepared by: Division of Elections

This is in response to your request for an advisory opinion regarding residency. You are the Supervisor of Elections for Flagler County and, pursuant to Section 106.23(2), Florida Statutes, the Division has authority to issue this opinion to you.

You ask when must a candidate meet the residency requirements for the office of school board member?

The answer to this question is found at Section 230.10, Florida Statutes, which provides that a candidate for school board must be a resident of the school board member residence area from which he seeks election at the time he qualifies.

Since the Division's jurisdiction to render opinions is limited to Chapters 97-106, Florida Statutes, we have no authority to interpret Section 230.10, Florida Statutes. However, Section 99.021, Florida Statutes, does require that all candidates, at the time of qualifying as candidates for public office, subscribe to an oath that they are qualified electors of their county. In order to be a qualified elector, one must be a resident of Florida and the county wherein he registers to vote.

The Division has issued several opinions on residency; none of these has specifically dealt with when one must meet a residency requirement. However, we have opined that unless otherwise provided constitutionally, legislatively or judicially, the qualifications one must possess for public office, which would include residency, are effective at the commencement of the term of office. Op. Div. Elect. 92-10 (June 24, 1992).

Consistent with the foregoing, the following is a list of locally elected public officers and the time at which their residency must be established:

County Commissioners:	At the time of election. <u>State v. Grassi</u> , 532 So. 2d 1055 (Fla. 1988); Op. Div. Elect. 92-10 (June 24, 1992).
School Board	At the time of qualifying. § 1001.361, Fla. Stat.

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City Commission:	At the time of assuming office, unless provided otherwise by city charter or ordinance. Op. Div. Elect. 92-10 (June 24, 1992).
Judges:	At the time of assuming office. Compare by analogy <u>Advisory Opinion to the Governor, 192 So. 2d 757 (Fla. 1966)</u> ; Ops. Div. Elect. 78-31 (August 3, 1978), and 92-10 (June 24, 1992).
County Constitutional Officers:	At the time of assuming office. Compare by analogy <u>Advisory Opinion to the Governor, supra</u> ; Op. Div. Elect. 92-10 (June 24, 1992).

Consequently, we remain of the opinion that the qualifications one must possess for public office are effective at the commencement of the term of office unless provided otherwise constitutionally, legislatively or judicially.

SUMMARY

The qualifications one must possess for public office, which would include residency, are effective at the commencement of the term of office unless otherwise provided constitutionally, legislatively or judicially.

DE 92-10 - June 24, 1992

**Preregistration and Subsequent Qualification for Office
Sections 97.041 and 99.021, F.S.**

TO: Honorable Cora Sue Robinson, Supervisor of Elections, Gulf County, 1000 Fifth Street, Port St. Joe, Florida 32456

Prepared by: Division of Elections

This is in response to your request for an advisory opinion regarding a person who, after preregistering to vote, is seeking to qualify for an elected public office. You are the Gulf County Supervisor of Elections and pursuant to Section 106.23(2), Florida Statutes, the Division of Elections has authority to render this opinion to you.

Substantially, you ask:

Whether a person, who will not be 18 years old until five days after the close of the qualifying period, may preregister to vote and qualify for the office of county commissioner?

Section 97.041, Florida Statutes, provides that persons are allowed to preregister to vote on or after their seventeenth birthday for any election occurring on or after their eighteenth birthday. Thus, a person cannot be a qualified elector until he is 18 years of age.

Section 99.021, Florida Statutes, provides that as a part of the qualification process, a person must swear to an oath or affirmation that, among other things, he is a qualified elector of his county.

It is well settled in Florida that the statutory oath a person is required to take upon qualifying for office refers to qualifications applicable when the term of the office he seeks begins. State ex rel. Fair v. Adams, 139 So.2d 879 (Fla. 1962), Davis ex rel. Taylor v. Crawford, 116 So. 41 (1928), State ex rel. Knott v. Haskell, 72 So. 651 (1916). Therefore, a person who will be a qualified elector when his term of office begins may qualify for the office of county commissioner.

Finally, we note that the qualifications for county commissioner are found in Article VIII, Section 1 (e), Florida Constitution. No minimum age requirement is provided for this office, and the legislature may not impose any additional qualifications. State v. Grassi, 532 So.2d 1055, 1056 (Fla. 1988).

SUMMARY

A person who is 17 years of age and who will not be 18 years of age and a qualified elector until five days after the close of the qualifying period may, nevertheless, qualify for the office of county commissioner. The candidate's qualifying oath that he is a qualified elector of his county refers to qualifications at the commencement of the term of office.

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A person who is 17 years of age and who will not be 18 years of age and a qualified elector until five days after the close of the qualifying period may, nevertheless, qualify for the office of county commissioner. The candidate's qualifying oath that he is a qualified elector of his county refers to qualifications at the commencement of the term of office.

Guidelines for Determining When Residency Qualifications for Office Must be Met <small>(updated 3-12)</small>	
<i>For reference purposes only: Interested persons or entities should refer to the Florida Statutes and applicable case, and/or consult a private attorney before making any legal conclusions or relying upon the information provided.</i>	
City Commissioner	<i>At the time of assuming office, unless provided otherwise by city charter or ordinance.</i> DE 94-04; DE 92-10; Nichols v. State 177 So.2d 467 (Fla. 1965) & Marina v. Leahy, 578 So.2d 382 (Fla. 3 rd DCA 1991)(re reasonable durational residency requirements)
County Commissioner	<i>At the time of election.</i> <u>State v. Grassi</u> , 532 So.2d 1055 (Fla. 1988); s. 1(e), art. VIII, Fla. Const.; DE 92-10, DE 94-04; AGO 74-293
Constitutional County Officers (e.g., clerk of court, supervisor of elections, property tax appraiser, sheriff, etc.)	<i>At the time of assuming office.</i> By analogy, refer to <u>Advisory Opinion to Governor</u> , 192 So.2d 757 (Fla. 1966); DE 90-30, DE 92-10, DE 94-04 (no minimum residency requirements set out in Florida Constitution but there may be county charters that mandate some durational residency)
Judicial Officers	<i>At the time of assuming office.</i> By analogy, refer to <u>Advisory Opinion to Governor</u> , 192 So.2d 757 (Fla. 1966); DE 94-04, and DE 78-31; s. 8, Art. V, Fla. Const. (justice/judge must be elector of state and reside in territorial jurisdiction of court)
State Legislators	<i>At the time of election.</i> See s. 15, art. III, Fla. Const. (for qualifications including residency). Legislator must be resident of district 'from which elected' but be a resident in state for two years prior to election.
School Board Member	<i>At the time of qualifying</i> (for residency ss. 1001.34, 1001.361, Fla. Stat. – formerly 230.10, Fla. Stat.) (DE 82-2, 94-04 –statute cited is s. 230.10, Fla. Stat.)
School Superintendent	<i>At the time of assuming office.</i> See DE 94-04; see s. 1001.463, Fla. Stat., failure to maintain residency results in vacancy (implies residency requirement); s. 5, art. IX, Fla. Const. (4-yr term); s. 1001.46, Fla. Stat. (elected); s. 1001.461, Fla. Stat. (appointed)
Write-in Candidate	<i>At the time of qualifying.</i> See s. 99.0615, Fla. Stat. (residency requirements)
<ul style="list-style-type: none"> • Rule of thumb: Unless otherwise provided for constitutionally, legislatively or judicially, the residency requirement, if one exists, for an office must be met at the time of assuming office. For example, Governor must have resided in state 7 years by time of election. See s. 5, Art. IV, Fla. Const. • State law requires that all candidates at the time of qualifying subscribe to an oath that they are qualified electors of their county. In order to be a qualified elector, one must be a resident of Florida and the county wherein he or she registers to vote. Although the completed oath is an affirmation at the time of execution that the candidate meets the requirements for qualifying such as residency, in practice, the candidate is expected to meet the requirements at the time of assuming office unless otherwise provided for constitutionally, legislatively or judicially. See s. 99.021, Fla. Stat. • A residency requirement, if one exists, for an office is a continuous one. Failure to maintain the residency through term results in vacancy in office. See generally s. 3, art. X, Fla. Const., s. 114.01(1)(g), Fla. Stat. In absence of a statute, constitutional provision or municipal ordinance that establishes a residency requirement, failure to maintain residency alone would not trigger a vacancy in office. See AGO 75-113; AGO 88-11 (exception for redistricting). • Any questions regarding residency requirements not otherwise expressly stated in the Florida Election Code should be addressed to the Florida Attorney General's Office. • Questions about residency relating to a U.S. Senator or U.S. Representative should be directed to the respective Congressional chamber with <u>exclusive</u> jurisdiction over the qualifications including the residency of its membership. See ss. 2, 3, & 5, Art. I, U.S. Const. States have no authority to add more residency requirements. 	
<small>Sources: Advisory opinions for Division of Elections (http://election.dos.state.fl.us/); Attorney General (http://myfloridalegal.com); case law</small>	

Appendix D

DE 80-27 - August 21, 1980

Residence Requirement For A County Commission Candidate

To: Mr. Jay A. Smith, Assistant Mayor, City of Vero Beach, Vero Beach, Florida

Prepared by: Division of Elections

This is in response to your request for advisory opinion pursuant to Section 106.23(2), Florida Statutes (1979). Your questions can be restated:

1. Must a candidate for the county commission in Indian River County District 5 be a resident of the district for which he qualifies as a candidate?
2. Is the residency requirement of Section 99.032, Florida Statutes (1979), met by a candidate who is a guest in someone's home in the district?

Section 99.032, Florida Statutes (1979), states:

A candidate for the office of county commissioner shall at the time he qualifies, be a resident of the district from which he qualifies.

Note: This portion of the opinion is obsolete. Please consult current Florida Law.

Quite clearly, the law sets forth a district residency requirement for a county commission candidate. The law expressly requires residence at the time of qualifying.

The members of the board of county commissioners are elected by the voters of the entire county, but a commissioner must reside in each of the commission districts. Article VIII, Section 1 (e), Florida Constitution of 1968. It was to insure compliance with this constitutional provision that the Legislature enacted Section 99.032, Florida Statutes (1979). The residency requirement is a continuous requirement as the Constitution provides that a "failure to maintain the residence requirement when elected or appointed" causes a vacancy to occur. Article X, Section 3, Florida Constitution of 1968. See DE Opinion 78-19 (March 21, 1978).

The courts have construed the term resident (residency) on numerous occasions. The generally accepted definition of residence is synonymous with domicile, "that place in which habitation is fixed, without any present intention of removing therefrom." *Berry v. Wilcox*, 44 Neb. 82, 62 N.W. 249 (1895), cited in *Op. Atty. Gen. 070-97 (August 3, 1970)*. Florida law equates the phrase "legal resident" with permanent resident, domicile or permanent abode, as distinguished from temporary residence. *Bloomfield v. City of St. Petersburg*, 82 So. 2d 364 (Fla. 1955).

The key element of residency is the intent of the individual. Permanent residence is wherever a person intends to make a permanent domicile, which can be factually supported. Such factual support may be voter's registration, driver's licenses, tax receipts, receipt of mail or activities normally indicative of home life. See *Op. Atty. Gen. 063-31 (March 20, 1963)*. All of the foregoing do not prove place of

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legal residency but may be used as evidence of that fact. Accordingly, whether a candidate who is a guest in a home has established a residence there depends on the surrounding circumstances and the intent of the person.

The Division of Elections is without authority to look beyond a candidate's qualifying papers to determine a person's eligibility as a candidate. The Supreme Court has stated:

Once the candidate states his compliance, under oath, the Secretary's ministerial determination of eligibility for the office is at an end. Any challenge to the correctness of the candidate's statement of compliance is for appropriate judicial determination upon any challenge properly made . . . State ex. Rel. Shevin v. Stone, 279 So. 2d 17, 22 (Fla. 1972).

This decision applies to supervisors of election as well. See DE Opinion 78-30 (August 3, 1978). Had there been a discrepancy in the qualifying papers between the actual place of residency and the district residence area, the supervisor could have invoked the notification procedures of Section 99.061(5), Florida Statutes (1979). But if there was no discrepancy on the face of the papers, the supervisor is without authority to question the candidate's statement of compliance. Any other challenge to the candidate's eligibility to be on the ballot is a matter for the appropriate judicial tribunal.

DE 93-05 - June 23, 1993

Residency

§§ 97.041(2), 97.051 and 97.091(1), F.S.

TO: The Honorable David C. Leahy, Supervisor of Elections, Dade County, 111 Northwest First Street, Suite 1910, Miami, Florida 33128-1962

Prepared by: Division of Elections

This is in response to your request for an advisory opinion regarding legal residency of an individual who asked to be registered as a voter in Dade County. The Division of Elections has authority pursuant to Section 106.23(2), Florida Statutes, to issue advisory opinions relating to the Florida Election Code, Chapters 97-106, Florida Statutes, to several categories of persons, including supervisors of elections.

According to your letter and subsequent conversations with this office, an individual has moved his personal belongings from Broward County to Dade County and is now living with his mother in Dade County. This person is engaged in divorce proceedings and his spouse remains in the marital home in Broward County. He has stated his intent to permanently remain at the residence to which he has moved in Dade County and has asked to register to vote in Dade County. Based on the foregoing, you ask whether, pursuant to Section 97.091(1), Florida Statutes, the individual is a legal resident of Dade County or Broward County.

It is the opinion of the Division that, for the purpose of registering to vote, an individual has established legal residency in a county when he physically moves to the county with the intent of making that county his permanent home.

Section 97.091(1), Florida Statutes, is inapplicable to the above-described factual scenario. That section applies only where a person temporarily moves outside his county of legal residence and remains a voter in the county of his legal residence. Here, the person has moved permanently and asked to register to vote in the county in which he has established his new legal residence. Under these circumstances, the person would need to reregister as a voter in accordance with Sections 97.041 and 97.051, Florida Statutes.

No provision of the Florida Election Code defines legal residency. However, this office and Florida courts have consistently construed legal residence to mean a permanent residence, domicile, or permanent abode, rather than a residence that is temporary. See, Op. Div. Elect. Fla. 80-27 (August 27, 1980); Walker v. Harris, 398 So. 2d 955 (Fla. 4th DCA 1981); and Cruickshank v. Cruickshank, 420 So. 2d 914 (Fla. 1st DCA 1982).

In Bloomfield v. City of St. Petersburg Beach, 82 So. 2d 364 (Fla. 1955), the Florida Supreme Court stated:

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[W]here a good faith intention is coupled with an actual removal evidenced by positive overt acts, then the change of residence is accomplished and becomes effective. This is so because legal residence consists of the concurrence of both fact and intention. The bona fides of the intention is a highly significant factor.

Legal residence is, therefore, determined by looking to where a person intends to make a home permanent and to whether factual evidence exists to corroborate that intent.

In making this determination, no single piece of evidence, such as homestead exemption, is decisive. As directed in Ogden v. Ogden, 33 So. 2d 870, 873 (1947), "the best proof of one's domicile [legal residence] is where he says it is."

This is not to say, however, that proof of legal residence simply depends on a person's subjective intent. Instead, the establishment of legal residence depends on a variety of acts or declarations, all of which must be considered and weighed on a case-by-case basis. Examples of evidence which may be considered in determining whether legal residency has been established include driver's license, tax receipts, mail receipts, bank accounts, the relocation of personal effects, and the purchase or rental of property.

SUMMARY

An individual has established legal residency for voter registration purposes in a county when he physically moves to the county with the intent of making that county his permanent home.

DE 86-06 - May 1, 1986

**Ballot Name;
Use of Nickname
Section 99.021, Florida Statutes**

To: Honorable Ann Robinson, Supervisor of Elections, Indian River County, 1840 - 25th Street, Suite N-109, Vero Beach, Florida 32960-3394

Prepared by: Division of Elections

This is in response to your request for an advisory opinion pursuant to Section 106.23(2), Florida Statutes, regarding the use by a candidate as defined by the Florida Election Code, Chapters 97-106, Florida Statutes, of his or her proper name or nickname for appearance on the ballot.

Section 99.021, Florida Statutes, requires each candidate to include in his or her oath of candidacy the name as the candidate wishes it to appear on the ballot and directs certification of the name by the qualifying officer to the appropriate supervisor of elections so that the name may thus be printed on the ballot. Under common law principles, not abrogated by Florida law, a name consists of one Christian or given name and one surname, patronymic or family name; therefore, the name printed on the ballot ordinarily should be the Christian or given name and surname, 29 C.J.S. Elections §161. In Florida, a person's legal name is his Christian or given name and family surname, Carlton vs. Phalan, 100 Fla. 1164, 131 So. 117 (1930).

However, it has been determined that any name by which a candidate is known is sufficient on a ballot, and a person is legally permitted to have printed on the ballot the name which the candidate has adopted and under which he or she transacts private and official business, 29 C.J.S. Elections §161.

With regard to the use of nicknames, the Florida Attorney General determined many years ago that there appears to be no objection to including the nickname of a candidate by which he or she is generally known, along with the candidate's name, on the ballot.

Descriptive information such as a title (for example, Dr. or M.D.), although not part of a person's name, is permissible only when two persons of the same name or whose names are so similar as to reasonably cause confusion, seek the same office. See State vs. Murphy, 122 Ohio St. 620, 174 N.E. 252 (1930).

Election officials, however, may be justified in refusing to print on the ballot a candidate's nickname when it is not shown that the nickname ever was used by the candidate as part of his legal name, and such officials may be equally justified in refusing to print on the ballot a candidate's choice of a name which has not been adopted by him or her and under which the candidate has not transacted private and official business. See C.J.S. Elections §161.

In summary, ordinarily a candidate must use his or her Christian or given name and surname, unless it

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can be shown that the candidate is known by another name which he or she has adopted and under which he or she transacts private and official business. In addition, a candidate may use a legitimate nickname and, where confusion would result, the candidate may use a descriptive designation.

June 4, 2012



FLORIDA DEPARTMENT of STATE

CHARLIE CRIST
Governor

KURT S. BROWNING
Secretary of State

July 15, 2009

Ms. Priscilla A. Thompson
City of Miami
Office of the City Clerk
3500 Pan American Drive
Miami, Florida 33133

RE: DE 09-05
Qualifying – Role of Qualifying Officer;
Candidate nickname; §§ 99.021(1), 99.061(7),
100.3605(1), and 104.011(1), Florida Statutes

Dear Ms. Thompson:

This letter responds to your request for an advisory opinion. You are the City Clerk for the City of Miami and serve as the filing officer for municipal candidates submitting qualification paperwork for Miami's municipal elections; therefore, the Division has the authority to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2008).

You ask essentially the following questions:

1. Does the filing officer have the authority to reject qualification papers which on their face appear in proper order and which comply with applicable qualifying requirements if an opposing candidate challenges the veracity of the documents' contents?
2. What level of scrutiny must a filing officer apply to ascertain whether a prospective candidate legitimately has a nickname that is eligible for placing on the ballot?

You also ask a third question: "Is the City Clerk, when acting as both the election officer and notary, compelled to ascertain the veracity of the statements sworn to by the prospective candidate before she notarizes the candidate's documents?" To the extent that this question asks about a notary public's duty, the Division of Elections does not have the authority to respond because an answer would involve an interpretation of chapter 117, Florida Statutes (2008). The Division's authority is limited to provide advisory opinions about Florida's Election Code (chapters 97 - 106, Florida Statutes). If your third question is not adequately addressed in the Division's response to Question #1, you may wish to request an opinion from Florida's Attorney

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July 15, 2009
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General regarding a notary public's duty to verify the accuracy of the information being notarized.

With regard to Question #1, the short answer is "no."

Your letter states that a candidate asked you to disqualify an opposing candidate because the opposing candidate had filed an affidavit of financial hardship "despite [his] ownership in a home conservatively valued at \$750,000 as evidenced in his Statement of Financial Interests."

Under section 99.061(7), Florida Statutes (2008), in order for a candidate to be qualified for office, certain items must be received by the filing officer before the qualifying period ends. Such items include the candidate oath required by s. 99.021(1), Florida Statutes (2008), in which the candidate must appear before an officer authorized to administer oaths, and either swear or affirm, among other statements, "that he or she is qualified to hold the office to which he or she desires to be nominated or elected." Prior opinions by the Division of Elections,¹ the Attorney General,² and the Florida Supreme Court³ consistently state that a filing officer to whom candidates submit their qualifying papers performs a purely ministerial function and that the filing officer must accept completed qualifying papers submitted under oath or affirmation. The most relevant and succinct pronouncements come from the Florida Supreme Court which has twice addressed the Secretary of State's role as the filing officer for candidates for the Florida House of Representatives (which we believe is analogous to the role of other filing officers for candidates under the Election Code). First, the court stated:

[T]he Secretary of State is without authority to pass judgment on questions de hors⁴ the filing instruments concerning the qualifications of candidates. That is a question that can only be decided by a court of competent jurisdiction.⁵

Thereafter, the court stated:

Once the candidate states his compliance, under oath, the Secretary's ministerial determination of eligibility for the office is at an end. Any challenge to the correctness of the candidate's statement of compliance is for appropriate judicial determination upon any challenge properly made. . . .⁶

¹ *Division of Elections Opinion 04-05* (May 27, 2004); *Division of Elections Opinion 00-09* (August 22, 2000); *Division of Elections Opinion 82-22* (August 31, 1982); *Division of Elections Opinion 80-27* (August 21, 1980); and *Division of Elections Opinion 78-305* (August 3, 1978).

² *Op. Att'y Gen. Fla. 76-130* (1976); *Op. Att'y Gen. Fla. 74-293* (1974); *Op. Att'y Gen. Fla. 72-224* (1972); and *Op. Att'y Gen. Fla. 58-231* (1958).

³ *Shevin v. Stone*, 279 U.S. 17 (Fla. 1972); *Cherry v. Stone*, 265 So. 2d 56 (Fla. 1972); *Hall v. Hildebrand*, 168 So. 531 (Fla. 1936); and *Davis v. Crawford*, 116 So. 41 (Fla. 1928).

⁴ "Dehors" is a French term used to mean "outside" or "beyond the scope of." *Black's Law Dictionary* (8th ed. 2004).

⁵ *Cherry v. Stone*, 265 So. 2d 56, 58 (Fla. 1972).

⁶ *Shevin v. Stone*, 279 So. 2d 17, 22 (Fla. 1972).

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July 15, 2009
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We adhere to these opinions. A filing officer governed by Florida's Election Code may not reject qualifying documents when they appear complete on their face and are properly executed under oath or affirmation. An opposing candidate's recourse to question the correctness of an opposing candidate's qualifications is to challenge the qualifications in a competent court of law.

The rationale explained above would not allow you as the qualifying officer to go beyond the four corners of the financial hardship affidavit submitted as part of the candidate's qualifying paperwork in determining the veracity of the underlying facts in the affidavit. However, our response to Question #1 is necessarily limited to the application of the Election Code and may not cover the particular duties of a municipal filing officer specified by a municipal charter or ordinance. Section 100.3605, Florida Statutes (2008), permits a municipality to change the applicability of any provision of the Election Code that does not expressly apply to municipalities. Section 100.3605(1) states:

The Florida Election Code, chapters 97-106, shall govern the conduct of a municipality's election in the absence of an applicable special act, charter, or ordinance provision. No charter or ordinance provision shall be adopted which conflicts with or exempts a municipality from any provision in the Florida Election Code that expressly applies to municipalities.

As an attachment to your request, you included provisions of Miami's municipal charter and code. The Division of Elections has no authority to interpret provisions of a municipal charter or code; therefore, the Division does not render an opinion regarding whether your charter and code impose any greater duty on you than that placed upon a filing officer governed solely by Florida's Election Code.

Regarding Question #2, the short answer is that a filing officer may require a candidate to make a satisfactory showing that the candidate has been generally known by the nickname or the candidate has used the nickname as part of the candidate's legal name.

Your request for an advisory opinion states that a candidate had listed his name on the candidate oath form as he desired it to appear with "Ambassador" between his first and last names, with the candidate indicating that "Ambassador" was his nickname, not a title. An opposing candidate questioned the appropriateness of this nickname being included on the ballot alleging that you had no proof before you that the candidate used this nickname.

The Election Code and Florida case law are silent regarding the definition or the wording of a candidate's name, except section 99.021, Florida Statutes (2008), which instructs the candidate as part of the candidate's oath to "please print name as you wish it to appear on the ballot." This statement seemingly provides the candidate with freedom to determine how he or she wants the name to appear. However, we believe the definition of "name" in the statute should be given its ordinary and usual meaning, that is, the designation by which the person is commonly known and

Ms. Priscilla A. Thompson
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others call him or her.⁷ Therefore, the name should not be one made up solely for purposes of the election.⁸

In *Division of Elections Opinion 86-06* (May 1, 1986), we opined that

it has been determined that any name by which a candidate is known is sufficient on a ballot, and a person is legally permitted to have printed on the ballot the name which the candidate has adopted and under which he or she transacts private and official business, 29 C.J.S. Elections §161.

With regard to the use of nicknames, the Florida Attorney General determined many years ago that there appears to be no objection to including the nickname of a candidate by which he or she is generally known, along with the candidate's name, on the ballot. [Op. Att'y Gen. Fla. 51-343 (1951).] . . .

Election officials, however, may be justified in refusing to print on the ballot a candidate's nickname when it is not shown that the nickname ever was used by the candidate as part of his legal name, and such officials may be equally justified in refusing to print on the ballot a candidate's choice of a name which has not been adopted by him or her and under which the candidate has not transacted private and official business. See C.J.S. Elections §161.

In summary, ordinarily a candidate must use his or her Christian or given name and surname, unless it can be shown that the candidate is known by another name which he or she has adopted and under which he or she transacts private and official business. In addition, *a candidate may use a legitimate nickname [Emphasis supplied.]*

We adhere to these statements. Notwithstanding the historical view that the filing officer performs a ministerial function, the 1986 opinion recognized that a filing officer may require a candidate to make a satisfactory showing that he or she is generally known by the nickname or that the candidate has used the nickname as part of his or her legal name. As discussed with respect to Question #1, a municipality may by charter or ordinance prescribe more specific duties for the filing officer in municipal elections regarding the verifications of nicknames. See § 100.3605(1), Fla. Stat. (2008).

⁷ 26 Am. Jur. 2d *Elections* § 293 (2009).

⁸ See, e.g., *Planas v. Planas*, 937 So. 2d 745 (Fla. 3DCA 2006), where the court disqualified a candidate when he chose a name for ballot designation that was similar to the name by which the incumbent was widely known and which name had not been adopted or used by the candidate to transact private and official business. The court held that a candidate's use of "a stratagem clearly intended to deceive and confuse voters with the incumbent ... simply cannot be permitted."

June 4, 2012

Ms. Priscilla A. Thompson
July 15, 2009
Page 5 of 5

SUMMARY

A filing officer governed by Florida's Election Code may not reject qualifying documents when they appear complete on their face and are executed under oath or affirmation. An opposing candidate's recourse to question the correctness of an opposing candidate's qualifications when the opponent has sworn or affirmed that he or she is qualified to hold the office is to challenge the qualifications in a competent court of law.

Before a candidate's nickname is printed on the ballot, a filing officer may require a candidate to make a satisfactory showing that the candidate has been generally known by the nickname or the candidate has used the nickname as part of the candidate's legal name.

Notwithstanding the above statements, a municipality may by charter or ordinance under section 100.3605(1), Florida Statutes (2008), prescribe more specific duties for the municipal filing officer regarding the verification of a candidate's qualifying papers or use of a nickname in its elections.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Palmer', with a long horizontal stroke extending to the right.

Donald L. Palmer
Director, Division of Elections

June 4, 2012



FLORIDA DEPARTMENT of STATE

CHARLIE CRIST
Governor

DAWN K. ROBERTS
Interim Secretary of State

IMPORTANT NOTICE

TO: All Candidates Qualifying with the Division of Elections

FROM: Donald L. Palmer, Director
Division of Elections *DP*

DATE: May 11, 2010

SUBJECT: Use of Nickname on Ballot

NOTICE TO CANDIDATES QUALIFYING WITH THE DIVISION OF ELECTIONS¹

The candidate oath form that must be filed during the qualifying period requires you to designate your "name as you wish it to appear on ballot." Case law and Division of Elections Opinions 86-06 and 09-05 permit a nickname to be printed on the ballot along with one's surname when the nickname is one by which the person is generally known or one that the person has used as part of his or her legal name. For example, if John Jones is generally known as Bo Jones, permissible designations on the ballot may be John "Bo" Jones, John (Bo) Jones, Bo Jones, or John Jones. The Division of Elections opinions recognize that a qualifying officer may require the candidate to make a satisfactory showing that the candidate is generally known by the nickname or the nickname has been used as part of the candidate's legal name before a nickname is printed on the ballot.

If you plan to designate a nickname on your candidate oath form other than a generally recognized shortened version of your legal name (e.g., "Rob" or "Bob" for Robert, "Bill" for William, "DJ" for David Joseph, *etc.*), you should provide notice of your intention to the Division of Elections well in advance of the qualifying period and make a satisfactory showing that you are generally known by the nickname or that you have used the nickname as part of your legal name. Failure to provide such information in advance may result in

¹ If you are a candidate who does not qualify with the Division of Elections and you desire to have your nickname printed on the ballot, you should contact your qualifying officer well in advance of the qualifying period to find out what the qualifying officer's requirements are to allow your nickname to be printed on the ballot.

Division of Elections
R. A. Gray Building, Room 316 • 500 South Bronough Street • Tallahassee, Florida 32399-0250
Telephone: (850) 245-6200 • Facsimile: (850) 245-6217
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Appendix H

June 4, 2012

All Candidates Qualifying with the Division of Elections
May 11, 2010
Page 2

the Division not having sufficient time during the qualifying period to determine if the nickname may be printed the ballot.

Attached to this Notice is an example of an Affidavit that also mentions supporting documentation that you may consider submitting to the Division of Elections in advance to show that the nickname is legitimate.

NOTE: Division of Elections Opinion 86-06 states: Descriptive information such as a title (for example, Dr. or M.D.), although not part of a person's name, is permissible only when two persons of the same name or whose names are so similar as to reasonably cause confusion, seek the same office." Therefore, ordinarily, even if a candidate is commonly referred to as "Doctor," "Professor," or "Colonel," those titles would not be allowed as a nickname or as a part of a nickname unless such descriptive information is reasonably necessary to avoid confusion among candidates.

KRB/kfg

Sample Affidavit for Use of Nickname on Ballot

AFFIDAVIT OF (Insert legal name of candidate)

STATE OF FLORIDA
COUNTY OF _____

BEFORE ME, the undersigned authority, personally appeared (insert legal name of candidate), who being first duly sworn or placed under affirmation, says:

1. My legal name is _____. I am over the age of eighteen (18) and the contents of this affidavit are true and correct.

2. I am a candidate for the office of _____.

3. My nickname is _____. I am generally known by this nickname or have used it as part of my legal name. I have not created the nickname to mislead voters. I plan to designate this nickname on my candidate oath as the name I wish to have printed on the ballot when I submit the candidate oath form during the qualifying period for the above office.

4. Attached are (insert #) documents that show that my nickname is one by which I am generally known or is one that I have used as a part of my legal name: (list the title of any documents or affidavits from other persons reflecting that the candidate is generally known by the nickname or that it has been used as part of the candidate's legal name).

Further, affiant sayeth not.

Signature of Affiant

Printed/Typed Name of Affiant

Sworn to and subscribed before me this ____ day of _____ 20__ by (insert legal name of candidate).

(SEAL)

Notary Public

Printed Name

Personally known _____ or Produced Identification _____

Type of Identification Produced _____

CEO 82-72 -- September 20, 1982

FINANCIAL DISCLOSURE

**DISCLOSURE PERIOD TO BE USED BY A MUNICIPAL CANDIDATE IN FILING
FINANCIAL DISCLOSURE**

To: *Mr. David M. Carr, Attorney for Tampa City Council*

SUMMARY:

A candidate for a 1983 city election who qualifies after January 1, 1983 is required to file Form 1, Part 1, Statement of Financial Interests, as reflecting his financial interests for the tax year ending December 31, 1982, rather than for the tax year ending December 31, 1981. The disclosure period for which a statement of financial interests is to be filed is defined in Section 112.312(8), Florida Statutes, to mean the taxable year immediately preceding the date on which the disclosure statement is required to be filed. As most individuals' taxable year is the calendar year, a candidate's statement of financial interests should be based on the most recently completed calendar year. Similarly, an incumbent who qualifies as a candidate for a 1983 city election after January 1, 1983 should file a new disclosure form reflecting his financial interests for the year ending December 31, 1982, rather than a copy of the disclosure form previously filed for the tax year ending December 31, 1981.

QUESTION 1:

Is a candidate for the 1983 City of Tampa election who qualifies after January 1, 1983 required to file Form 1, Part 1, Statement of Financial Interests, as reflecting his financial interests for the tax year ending December 31, 1982 or for the tax year ending December 31, 1981?

The financial disclosure law applicable to elected municipal officials and candidates for elective municipal office, Section 112.3145, Florida Statutes, is based upon the concept of a "disclosure period." That term is defined in Section 112.312(8), Florida Statutes, as follows:

'Disclosure period' means the taxable year for the person or business entity, whether based on a calendar or fiscal year, immediately preceding the date on which, or the last day of the period during which, the financial disclosure statement required by this part is required to be filed.

For the vast majority of individuals, the taxable year will be the calendar year ending on December 31. Section 441, U.S. Internal Revenue Code. Therefore, when a statement of financial interests is filed, the statement should include the most recently completed calendar year.

Accordingly, when a candidate files a statement of financial interests (Form 1, Part 1) as part of his qualifying papers after January 1, 1983, the statement should reflect the candidate's financial interests for the calendar year ending December 31, 1982 -- the most recently completed calendar year.

QUESTION 2:

May an incumbent who qualifies as a candidate for the 1983 City of Tampa election after

Appendix I

June 4, 2012

January 1, 1983 file a copy of the disclosure form previously filed for the tax year ending December 31, 1981, or must the incumbent file a new disclosure form reflecting his financial interests for the year ending December 31, 1982?

In our view, this question is substantially the same as the first question you have posed. Since the "disclosure period" for which the candidate will be filing will be the most recently completed calendar year, a new financial disclosure form reflecting financial interests for the tax year ending December 31, 1982 should be filed with the candidate's qualifying papers.

June 4, 2012



FLORIDA DEPARTMENT OF STATE

CHARLIE CRIST
Governor

KURT S. BROWNING
Secretary of State

May 18, 2009

Mr. Solomon Odenz
City Clerk, City of North Miami Beach
City Hall
17011 N. E. 19th Avenue
North Miami Beach, Florida 33162-3100

RE: DE 09-01
Qualifying – City Council Candidate;
Mistaken Group Number Designation
§ 99.061, Florida Statutes

Dear Mr. Odenz:

This letter responds to a request for an advisory opinion, submitted by the City Attorney on your behalf, regarding whether you should qualify a candidate to run for City Council when the candidate mistakenly placed the incorrect group number on his Oath of Candidate form. Because you are a local official with election-related duties and you have a question about compliance with Florida's election laws, the Division has the authority to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2008).

According to the request for an opinion, the City of North Miami Beach is governed by the qualifying provisions of the state's Election Code. *See* section 100.3605(1), Florida Statutes (2008). The request further relates that, before the qualifying period, a candidate for City Council opened a campaign account and filed the Appointment of Campaign Treasurer and Designation of Campaign Depository for Candidates (Form DS-DE 9) listing the office of "Councilperson – Grp 5." The "Grp 5" designation was also on the Statement of Candidate (DS-DE 84) filed the same date. However, on the first day of qualifying, the candidate submitted his Loyalty Oath and Oath of Candidate, specifying that he was a candidate for "Councilman, Grp 6." The candidate had not filed another Form DS-DE 9 amending the group designation. The City Clerk discovered the discrepancy in the group designations on the qualifying papers after the qualifying period ended. Upon being notified of the conflicting group designation, the candidate immediately submitted a written statement to the filing officer stating that he "made a mistake on the loyalty oath. Please correct to say Group 5."

Based upon the foregoing facts, you essentially ask the following question:

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Appendix J

Mr. Solomon Odenz
May 18, 2009
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Has the candidate qualified as a candidate for City Council?

The short answer is that the decision whether to qualify the candidate rests with the qualifying officer, upon consultation with counsel, in light of the considerations identified in case law discussed below.

Section 99.061(7), Florida Statutes (2008), requires that before a candidate may be qualified, certain items must be received by the filing office. Two of those items are: (1) the candidate's oath "which must contain the name of the candidate as it is to appear on the ballot; the office sought, including the district or group number if applicable . . . ; and (2) the completed form for the appointment of campaign treasurer and designation of campaign depository . . ." Section 106.021, Florida Statutes (2008), requires that a group number also be placed on the appointment of campaign treasurer and designation of campaign depository form, if applicable.

In the present situation, the candidate filed the proper forms which were complete on their face, but they specified conflicting group numbers for the seat; therefore, the question arises whether the candidate's post-qualification period submission to clarify the inconsistency is effective to make him qualified for City Council, Group 5. The Florida Supreme Court has stated:

Once the deadline for filing has passed no further alterations or changes can be made in a candidate's qualification papers. This court has uniformly held that a candidate's qualification papers must be completed and filed within the time prescribed by statute, and that any errors or omissions cannot be corrected after the filing deadline has passed. See *State ex rel. Taylor v. Gray*, 25 So. 2d 492 (Fla. 1946); *State ex rel. Vinning v. Gray*, 17 So. 2d 288 (Fla. 1944).

Battaglia v. Adams, 164 So. 2d. 195, 199 (Fla. 1964). The court has squarely placed the responsibility upon the candidate to exercise due care in submitting his qualifying papers. *State ex rel. Taylor v. Gray*, 25 So. 2d 492, 406 (Fla. 1946). The Division echoed this position in *Division of Elections Opinion 82-22* (August 31, 1982): "Thus, the qualifying officer . . . has no authority to take any action on errors in qualifying papers after the qualifying period has ended. Any corrections or changes subsequent to the closing of the qualifying period must be made by appropriate challenge through a judicial forum. See *State ex rel. Shevin v. Stone*, 279 So. 2d 17 (Fla. 1972); DE 78-30, dated August 3, 1978."

While these authorities seemingly created a bright-line standard for qualification determinations, other decisions have muddied the waters. In *State ex rel. Siegenorf v. Stone*, 266 So. 2d 345 (Fla. 1972), the Secretary of State, as the qualifying officer, accepted qualifying papers submitted by a candidate for county judge, even though the oath form did not completely describe the office for which the candidate was attempting to qualify. The oath form reflected that the candidate was seeking election to office of "Judge (group) 3," but did not indicate that the candidate was qualifying for the office of county judge, nor did it specify the county. The Secretary determined which judicial office the candidate was seeking through a process of elimination based upon the amount paid as the qualifying fee. The candidate's

Mr. Solomon Odenz
May 18, 2009
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opponent filed suit to have the judicial candidate removed from the ballot. The court upheld the Secretary's action because the decisions of public administrators made within the area of their responsibilities "will be upheld, if factually accurate and absent some compelling circumstances, clear error or overriding legal basis." *Id.* at 346. The *Siegenderf* court also stated, "[l]iteral and 'total compliance' with statutory language which reaches hypersensitive levels and which strains the quality of justice is not required to fairly and substantially meet the statutory requirement to qualify as a candidate for public office." *Id.* The Division has interpreted this language in the context of the *Siegenderf* facts as giving deference to the qualifying officer's administrative determination of whether the paperwork met the qualifying requirements, but not that the qualifying officer must qualify a candidate who submits deficient qualifying papers.

However, last year, the First District Court of Appeal relied on the *Siegenderf* language to retreat from the literal compliance approach of qualifying paperwork when it overruled the Secretary's determination that a candidate's paperwork was deficient. In *Browning v. Young*, 993 So. 2d 64 (Fla. 1st DCA 2008), the required disclosure of financial interests form was not properly notarized. The court held that because the notarization requirement appeared only on the form itself and the qualifying statute contained no express notarization requirement, the candidate could not be disqualified on the basis of an improper notarization. The court likened the case to *Siegenderf* and stated that the Secretary of State does not have "discretion to reject filing papers that have some technical defect but nevertheless meet all the requirements of the law." *Id.* The court expressed certainty that the supreme court would have ruled differently in *Siegenderf* if the error had "affected the legal sufficiency of the qualifying papers in the case" and that "[s]ubstantial compliance, as the term is used in *Siegenderf*, is the functional equivalent of legal compliance." *Young*, 933 So. 2d at 67. Thus, it appears the *Young* court interpreted *Siegenderf* as requiring a qualifying officer to accept filing papers that contain a "technical defect" so long as the paperwork "substantially complies" with the qualifying requirements and the defect does not "affect[] the legal sufficiency of the qualifying papers." Unless or until this ruling is clarified, qualifying officers and their counsel must attempt to apply these principles to the myriad circumstances presented during each candidate qualifying period.

To be sure, reasonable minds may differ regarding what constitutes "a technical defect," "substantial compliance," or "legal sufficiency." In the present case it may be argued, as in *Siegenderf*, that additional information in the candidate's qualifying file (e.g., the group 5 designations on two other forms) make it apparent that the candidate was seeking to qualify for City Council, group 5, not group 6, and that the paperwork should not be rejected due to this purely "technical defect." On the other hand, it may be argued that the paperwork is not "legally sufficient" because the candidate failed to file an oath which, by statute, "must contain . . . the office sought, including the district or group number if applicable," see § 99.061(7)(a)2, Florida Statutes (2008). Given the fact-based nature of this analysis, the wide room for differences of opinion, and the fact that the qualifying officer's decisions are subject to judicial review in the event of a legal challenge, it is not appropriate for the Division to opine on these questions beyond identifying the appropriate factors to be considered. Each



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(Cite as: 993 So.2d 64)

H

District Court of Appeal of Florida,
First District.
Kurt S. **BROWNING**, in his official capacity as
Florida Secretary of State, Appellant,
v.
Regina **YOUNG**, Appellee.
No. **1D08-3748**.


Sept. 5, 2008.
Rehearing Denied Oct. 29, 2008.

Background: Potential candidate for state House of Representatives sought writ of mandamus to direct Secretary of State to place her name on the ballot. The Circuit Court, Leon County, John C. Cooper, J., granted the petition. Secretary of State appealed.


Holding: The District Court of Appeal, Padovano, J., held that potential candidate's financial interest disclosure form complied with election laws, despite notary public's acknowledgement of the form without specifying name of county.

Affirmed.

West Headnotes


[1] Mandamus 250  **187.2**

250 Mandamus
250III Jurisdiction, Proceedings, and Relief
250k187 Appeal and Error
250k187.2 k. Decisions Reviewable and Proper Mode of Review. Most Cited Cases
When mandamus is used in the circuit court as an appellate remedy to review judicial or quasi-judicial actions of lower tribunals, further review in the district court of appeal is by certiorari and not by a plenary appeal.


[2] Mandamus 250  **188**

250 Mandamus

250III Jurisdiction, Proceedings, and Relief
250k188 k. Certiorari to Review Proceedings. Most Cited Cases
Circuit court's final order granting writ of mandamus to compel Secretary of State to place on ballot the name of potential candidate for state House of Representatives was an order in an original civil proceeding in the circuit court, such that the District Court of Appeal could review the matter by appeal rather than by certiorari; mandamus was not employed in the circuit court as an appellate remedy, but rather as a civil remedy to compel a public official to discharge a ministerial duty.

[3] States 360  **28(1)**

360 States
360II Government and Officers
360k24 Legislature
360k28 Members
360k28(1) k. In General. Most Cited Cases
Financial interest disclosure form of potential candidate for state House of Representatives was in legal compliance with state election laws, though notary public who acknowledged form filled in blank space for name of county with "Florida" rather than the county name; state constitution and election laws required that public disclosure of financial interests be a sworn statement without specifying method of attestation, and Commission on Ethics requirement that form be notarized was not pursuant to statute. West's F.S.A. Const. Art. 2, § 8; West's F.S.A. §§ 92.525, 99.061(5), 112.3144.

[4] Officers and Public Employees 283  **18**

283 Officers and Public Employees
283I Appointment, Qualification, and Tenure
283I(C) Eligibility and Qualification
283k18 k. Eligibility in General. Most Cited Cases
Literal and total compliance with statutory language which reaches hypersensitive levels and

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which strains the quality of justice is not required to fairly and substantially meet the statutory requirement to qualify as a candidate for public office.

[5] Elections 144 ↪ 126(1)

144 Elections
144VI Nominations and Primary Elections
144k126 Nomination by Primary Election
144k126(1) k. In General. Most Cited

Mandamus 250 ↪ 74(3)

250 Mandamus
250II Subjects and Purposes of Relief
250II(B) Acts and Proceedings of Public Officers and Boards and Municipalities
250k74 Elections and Proceedings Relating Thereto

250k74(3) k. Announcing Candidacy, Placing Names on Ballot, and Filing and Certifying Ticket. Most Cited Cases

If the qualifying papers submitted by a candidate comply with the election laws, the elections official has a duty to accept them, and mandamus will lie to enforce that duty.

*64 Bill McCollum, Attorney General, Ashley E. Davis, Assistant Attorney General, and Russell S. Kent, Special Counsel for Litigation, Office of the Attorney General, Tallahassee, for Appellant.

*65 John S. Mills of Mills Creed & Gowdy, P.A., Jacksonville; Clyde M. Collins, Jr., and Max Story, Jacksonville, for Appellee.

PADOVANO, J.

Regina Young seeks election to the Florida House of Representatives. She filed her qualifying papers with the Secretary of State within the time allowed by law, but there was an error on the Commission on Ethics Full and Public Disclosure of Financial Interest Form, more commonly known as the CE-6 Form. The notary public who verified Young's signature on the form neglected to write the word

"Duval" in the blank for the county in which the form was signed. Instead, the notary wrote the word "Florida."

Based on this defect, the Secretary of State determined that Young was not qualified to run for the House of Representatives. He declined to place her name on the ballot, and she then sought relief in the courts by mandamus. The trial judge held a hearing on the petition and concluded that Young had substantially complied with the Florida election laws. Accordingly, the judge granted the petition and directed the Secretary to place Young's name on the ballot. The Secretary seeks review in this court.

[1][2] The order is one that is reviewable by appeal. Mandamus is now frequently used in the circuit court as an appellate remedy to review judicial or quasi-judicial actions of lower tribunals. When that is the case, further review in the district court of appeal is by certiorari and not by a plenary appeal. *See Sheley v. Fla. Parole Comm'n*, 703 So.2d 1202 (Fla. 1st DCA 1997), *approved*, 720 So.2d 216 (Fla.1998). However, mandamus was employed here in the way it was originally intended, as a civil remedy to compel a public official to discharge a ministerial duty. The petitioner was not seeking appellate review of a judicial or quasi-judicial decision. Because the final order granting mandamus in this case is an order in an original civil proceeding in the circuit court, we review the order by appeal. *See Weeks v. Golden*, 764 So.2d 633 (Fla. 1st DCA 2000).

[3] The question presented to the trial court was whether Ms. Young's papers were in substantial compliance with the Florida election laws. This was not a question that could be resolved in the trial court by the exercise of discretion. Nor does the answer turn on the facts. Everything the trial court needed to know about the alleged error is shown on the face of the form itself. The issue is whether Ms. Young's qualifying papers meet the requirements of election laws, despite the alleged deficiency identified by the Secretary. Because this is an issue of law, we review the trial court's decision by the de

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novo standard.

We begin with the text of the statute. Section 99.061(5), Florida Statutes provides that “each candidate for a constitutional office shall file a full and public disclosure of financial interests,” pursuant to Article II, section 8, of the Florida Constitution. This provision of the Constitution refers to a public disclosure of financial interests as a “sworn statement” but it does not specify a required method of attestation. No further direction is given on this point in the statute. Section 99.061(5) does not expressly require that a candidate's signature on the financial disclosure form must be notarized or that it must be verified in a particular way.

The financial disclosure form requires a notary acknowledgment, but that is not the only method of attestation the Commission on Ethics might have chosen to satisfy the “sworn statement” requirement in Article II, section 8. *66Section 92.525, Florida Statutes provides that a document may be verified in two different ways: (1) by signing it before an officer such as a notary public, or (2) by including a self-verification form stating that the document is signed under the penalty of perjury. The full text of the form for the latter method of verification is set out in section 92.525(2). It does not require a statement of the county in which the document is signed.

We do not suggest that the Commission on Ethics should have chosen a different method of verification. The point is that the method selected is not the equivalent of a statutory requirement. The Secretary is bound by the statute, not the form. Likewise, we are bound by the statute. If we were to construe the statute to require that a financial disclosure form be verified by a particular method, we would be creating a requirement that was not set by the Legislature. This we may not do under the separation of powers provision in Article II, section 3, of the Florida Constitution. See *Sloban v. Fla. Bd. of Pharmacy*, 982 So.2d 26 (Fla. 1st DCA 2008).

It is noteworthy that section 99.021, Florida Stat-

utes (2007), describes in detail the proper method of acknowledging a candidate's signature on the candidate oath form. An approved form of the candidate oath is incorporated into the text of the statute. This form includes the typical notary acknowledgment showing that it was signed and verified in Florida and it has a blank to write in the county in which it was signed. The Legislature could have incorporated a specific verification requirement such as this in section 99.061(5), for the execution of a financial disclosure form but did not.

The Secretary argues that the notary requirement need not be set out in the statute because it is an essential part of a form created by the Commission on Ethics at the direction of the Legislature. This argument unfolds in a number of steps. Section 99.061(5) requires a candidate to submit a financial disclosure form in order to qualify for office. Section 112.3144, Florida Statutes (2007), sets out in detail the required contents of a financial disclosure form. This statute does not state that the form must be notarized, but section 112.3147, Florida Statutes (2007), provides that the information a public official or candidate must disclose shall be on a form prescribed by the Florida Commission on Ethics. The final step is one not found in the statutes, but it is not in dispute. The form the Commission prepared at the direction of the Legislature does, in fact, require a notary public acknowledgment in the usual form with a space for the county.

We could read this sequence of statutes to mean that section 99.061(5) requires a notary acknowledgment on a financial disclosure form. However, if we hold that the failure to notarize a financial disclosure form disqualifies a candidate, we must be prepared to accept the proposition that the Florida Legislature meant to delegate to the Commission on Ethics not only the responsibility to prepare a form, but also the power to add a mandatory condition that must be met in order to qualify for public office. See *Sloban*, 982 So.2d at 29-31 (discussing the separation of powers provision in the context of a delegation of authority). That proposition is not

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certain.

It is more likely, in our view, that the Legislature meant to provide some degree of uniformity by ensuring that the information required by section 112.3144 be provided in the same way by every candidate on the same form. Candidates are required to have the form notarized in the manner required by the Commission on Ethics, but it is not at all clear that this procedural element can be elevated to a *67 mandatory condition to be met in order to qualify for public office.

We have dealt so far with the question whether the failure to notarize a candidate's signature on a financial disclosure form can disqualify the candidate, but, of course, the case is much better for Ms. Young. She did have her signature notarized. There is no question that she signed the form, that she appeared in person before the notary public, that she was placed under oath, that she attested to the truth of the information in the form, or that the notary public was authorized to acknowledge her signature. Although the form was signed in Florida, the line for the applicable county was not filled out correctly, and as a result it is not known precisely where in Florida it was signed.

Despite this defect in the verification, the form provided all of the financial information that is required by section 112.3144. There is no contention here that Ms. Young failed to report some of her financial interests or that she otherwise failed to make a full and complete public disclosure of her finances. For this reason we conclude that the financial disclosure form she filed is in compliance with the statutory requirements and that the error in omitting the county does not disqualify her from public office.

The supreme court addressed a similar issue in *State ex rel. Siegenдорf v. Stone*, 266 So.2d 345 (Fla.1972). In that case, the Secretary of State accepted qualifying papers submitted by a candidate for county judge, even though the oath form did not accurately describe the office for which the candid-

ate was attempting to qualify. All that was written on the oath form was that the candidate was seeking election to office of "Judge (group) 3." It did not indicate that the candidate was qualifying for the office of county judge, nor did it specify the county. However, it was apparent from other information the candidate provided that he was seeking election to the office of county judge in Dade County.

[4] On these facts, the supreme court held that the candidate had substantially complied with the election laws and that his name should remain on the ballot. As the court explained, "Literal and 'total compliance' with statutory language which reaches hypersensitive levels and which strains the quality of justice is not required to fairly and substantially meet the statutory requirement to qualify as a candidate for public office." *Siegenдорf*, 266 So.2d at 346.

The Secretary argues that mandamus is not the appropriate remedy to enforce a claim of substantial compliance. This argument is based in part on the observation in *Siegenдорf* that the job of Secretary of State is one that necessarily involves the exercise of some judgment. However, this observation does not support an argument that the Secretary of State has discretion to reject filing papers that have some technical defect but nevertheless meet all of the requirements of the law. We have no doubt that the supreme court would have issued a writ of mandamus in *Siegenдорf* if the error had been one that affected the legal sufficiency of the qualifying papers in that case. Substantial compliance, as the term is used in *Siegenдорf*, is the functional equivalent of legal compliance.

[5] We reversed an order granting a writ of mandamus in *Sancho v. Joanos*, 715 So.2d 382 (Fla. 1st DCA 1998), but that case is distinguishable. There, the issue was whether an elections supervisor has a duty to inform a candidate of any unmet requirements before the close of the qualifying period. We held that such a duty exists with respect to qualifying papers that are submitted for filing, but that the

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official accepting the papers has no *68 obligation to advise the candidate that he or she must take additional steps to meet all of the requirements. Some of the requirements (for example, whether the candidate currently holds an office he or she must resign) might not even be known to the elections official. The elections official is not required to act as legal advisor for a candidate. But it is an entirely different matter to argue that an elections official may exercise discretion to deny qualifying papers. If the qualifying papers submitted by a candidate comply with the election laws, the elections official has a duty to accept them, and mandamus will lie to enforce that duty.

For these reasons, we affirm the decision by the trial court. In the present case, as in *Siegenderf*, we conclude that the candidate complied with the election laws and that she is entitled to have her name on the ballot.

Affirmed.

VAN NORTWICK and THOMAS, JJ., concur.
Fla.App. 1 Dist.,2008.
Browning v. Young
993 So.2d 64, 33 Fla. L. Weekly D2125

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June 4, 2012



Department of State Memorandum

Office of the General Counsel

TO: Kristi Bronson
Chief, Bureau of Election Records

FROM:  Gary J. Holland
Assistant General Counsel

DATE: April 22, 2010

RE: Filing Fee for Community Development District

You have inquired about the proper disposition of the \$25 filing fee for candidates seeking to be elected to the Board of Supervisors for a Community Development District (CDD).

Section 190.003(6), Florida Statutes (2009), defines Community Development District as "a local unit of special-purpose government which is created pursuant to [chapter 190] and limited to the performance of those specialized functions authorized by [chapter 190]." Candidates for a CCD board qualify under s. 99.061. § 190.006(3)(c), Fla. Stat. (2009). Thus, a CDD candidate qualifies as a special district candidate by either paying the \$25 election fee or qualify by the petition process. § 99.061(3), Florida Statutes (2009).

Section 189.405(1)(c), Florida Statutes (2009), provides that a special district candidate's \$25 filing fee is to be paid "to the general revenue fund of the qualifying officer to help defray the cost of the election." However, s. 189.405(6), Florida Statutes (2009), expressly states that the provisions of section 189.405 do not apply to CDDs. Chapter 190, Florida Statutes, entitled "Community Development Districts," contains specific differences in the election procedures for a CDD as opposed to other special district elections; therefore, it is understandable why s. 189.405, Florida Statutes does not apply to CDDs. However, chapter 190, Florida Statutes, contains no provision about where the CDD candidate's filing fee is to go. This appears to be an inadvertent omission.

Because the Florida statutes are silent on the issue and in the absence of other specific applicable directives, it is appropriate to apply the general qualifying fee disposition provisions for special districts to CDD candidates. Therefore, the CDD candidate qualifying fee should be treated like that of any other special district candidate, i.e., it is to be paid "to the general revenue fund of the qualifying officer to help defray the cost of the election."

Appendix L