

RESCINDED

DE 77-11 - April 13, 1977

Effect Upon Election Of Unqualified Candidate Chapter 98, F.S.

To: Mr. C.E. Woodard, Post Office Box 320, White Springs, Florida 32096

Prepared by: Division of Elections

You have requested of the Division of Elections an official opinion respecting the following circumstances.

The Town of White Springs recently held an election for Town Council. Contesting for a council seat was the incumbent Don Davis and yourself. Although you lost the election allegedly by a margin of nine votes, it was later discovered that the incumbent was not a registered voter within the terms of registration entailed by Section 98.041, Florida Statutes, and was therefore not eligible to run for office according to Section 7 of the Town Charter as amended by House Bill 1659, Laws of Florida, 1951. See also, 11 Fla. Jur. Elections, Section 52, which provides that one does not qualify as an elector and is not thereby entitled to vote does not comply with the requirements of an oath that he be or is a qualified elector.

Having established therefore, that the incumbent was not a qualified elector and was therefore ineligible to run for the office of Town Council there remains to be determined whether you have been elected to the Town Council or whether the late election must be considered a nullity.

The District Court of Appeals for the Third Appellate District of Florida, in the case of Merrill vs. Dade County Canvassing Board, 300 So. 2nd 28 (Fla. App. 1974) invoked the "American Rule", which appears to be the majority rule, that the votes cast for a disqualified candidate are to be counted. See, 133 A.L.R. 321.

Accordingly, the runner up not having attained a majority of the votes cast would not be deemed to have been elected.

The elector, however, must be deemed to have been rendered nugatory, and Mr. Davis not to have been elected therein. See, 11 Fla. Jur. Elections, Section 125; 18 Am. Jur. Elections, Section 263.

Accordingly, another election must need be held.