

DE 77-17 - July 19, 1977

**Petitions For Qualifying Alternative Method; Independents
Chapter 99, F.S.**

To: Mr. Jim Fair, 1611 1/2 North Boulevard, Tallahassee, Florida 32303

Prepared by: Division of Elections

You have requested issuance by the Division of Elections of petition forms by means of which you wish to secure the names of registered voters in order to qualify for legislative office in respect of which no vacancy has yet obtained. By letter of July 6, 1977, this office informed you that no petitions could issue, pursuant to Section 99.095(1), Florida Statutes, absent the prerequisite filing of the oath and that the oath "shall be filed...after noon of the 84th day prior to the first primary." There being yet no vacancy in the office which you seek, no primary is set respecting same, save the primary set for regular legislative elections, and we have yet to reach the 84th day prior to same.

In this respect, a second question is implied, were the occupant of the legislative seat to which you aspire to vacate his office prior to the next general election. Article VI, Section 5, allows for special elections as provided by law, and Section 100.111, Florida Statutes, empowers the Governor to call same. Section 100.111(1) provides for special primaries therefore, such primaries to "be called by the governor who may fix the date of the primary election (or second primary, if necessary)..." Only if all provisions of Section 100.111(1) through (6)(c) fail of accomplishment may the Department of State, pursuant to Chapter 120, Florida Statutes, move to insure orderly elections. Section 100.111(6)(d), Florida Statutes. The Department shall fix qualification dates per Section 100.121(1), Florida Statutes, after the Governor fixes election dates. See also. Section 100.131, Florida Statutes.

It is clear, then, that the provisions of Section 99.095, Florida Statutes, are perforce inoperative in the context of such special election or primary.

Section 99.153, Florida Statutes, treating of Independent candidates would appear, similarly, to be inoperative. Section 99.153, Florida Statutes, imposes no time limitation upon one's initiation of the petitioning process, cf. Section 99.095(1), Florida Statutes. Nevertheless, Section 99.153 relates to "general election" as defined by Section 97.021(3), Florida Statutes, not to "special" elections per Section 97.021(2) and (4), Florida Statutes.

However, it must be noted that Chapter 77-175, the Florida Election Code of 1977 (effective January 1, 1978) obtrudes upon these considerations.

Section 99.095(1), Florida Statutes, of the Florida Election Code of 1977, does impose limitations upon one's initiation of the petitioning process: first Tuesday following the first Monday in January preceding the general election, but prior to the 92nd day prior to the date of the first primary election. Accordingly, any elections to be held after January 1, 1978, will be governed by the law. The

legislative history clearly reflects the legislature's intention to prevent the gathering of names on petitions (to be used to qualify for office) long, long before any vacancy or election. Names can, of course, be obtained on petitions at any time, but the legislature has limited the qualifying period regarding independent petitions even as it had regarding regular qualification and alternative means.

Accordingly, although you might now circulate petitions for a 1978 race, pursuant to Section 99.153 — though not pursuant to Section 99.095, Florida Statutes — such petitions would, as a matter of law, be dead letters and of no legal effect to qualify you as of January 1, 1978. All 1978 races and those thereafter would be governed by the law then in force, in this case Section 99.095(1), Florida Statutes, Florida Election Code of 1977.

Trusting that this opinion is responsive to your inquiry.