DE 78-22 - April 28, 1978

Freeholder Requirement To Be A Candidate; Port Everglades Authority
FLA. CONST. ART. VII, s. 9, ch. 59-1157, Laws of Florida

To: Mr. Stanley Watsky, 7925 Colony Circle South, Apartment 101, Tamarac, Florida 33321

Prepared by: Division of Elections

By your recent letter you requested an opinion of this office in answer to substantially the following question:

> May a person be required to be a freeholder in order to qualify as a candidate and hold office in Florida, specifically as commissioner of the Port Everglades Authority?

A freeholder is defined as one having title to realty, such as having an estate in land or other real property of uncertain duration. Black's Law Dictionary, 4th ed. (1968). When applied to the right to vote or hold office, freeholder becomes a property ownership qualification.

The history of this country and of Florida reflect a frequent reference to freehold requirements. In fact, "property qualifications and poll taxes have been a traditional part of our political structure." Harper v. Virginia State Board of Elections, 383 U.S. 663, 684, 16 L.Ed.2d 169 (1966) (Harlan, J., dissenting). At the time of the founding of this nation it was common to place property restrictions on exercise of the electoral franchise.

See generally Ogden, The Poll Tax in the South 2 (1958); 1 Thorpe, A Constitutional History of the American People 1776-1850, at 92-98 (1898). There was even some sentiment expressed at the Constitutional Convention in 1787 to prescribe to freehold qualification in federal elections. This was determined to be a matter better left to the states.

The states responded by enacting property qualifications for exercise of the right to vote and hold elective public office. As stated by Justice Harlan in his dissent to the Harper decision:

> "... it was properly accepted as sound political theory by a large percentage of Americans through most of our history, that people with some property have a deeper stake in community affairs, and are consequently more responsible, more educated, more knowledgeable, more worthy of confidences, than those without means. . . ." at 685.

But such notions of the value of property ownership gradually fell victim to evolving standards of our nation's attitude of egalitarianism.

The first to fall was the poll tax. Its demise was culminated in the ratification of the Twenty-Fourth Amendment to the U.S. Constitution. This amendment, made possible through the efforts of Florida's

late Senator Spessard Holland, banned such taxes in federal elections. Later the Supreme Court extended this prohibition to the states through application of the Equal Protection Clause of the Fourteenth Amendment. Harper v. Virginia State Board of Elections, 383 U.S. 663, 16 L.Ed.2d 169 (1966).

The trend against property restrictions continued in a series of decisions by the Court. In Kramer v. Union Free School District No. 15, 395 U.S. 621, 23 L.Ed.2d 583 (1969), a "compelling state interest" test was adopted. Much more stringent than previous studies to determine constitutional status, the effect was the failure of most property restrictions to pass constitutional muster.

The Kramer case invalidated a New York statute limiting school board elections to those owning or leasing property within the district. A Louisiana law limiting the franchise in local revenue bond elections to the "property taxpayers" of the district was voided. Cipriano v. City of Houma, 395 U.S. 701, 23 L.Ed.2d 674 (1969). A similar fate met the same restriction in a general obligation bond issue. City of Phoenix v. Kolodziejski, 399 U.S. 204, 26 L.Ed.2d 523 (1970). Finally, in Hill v. Stone, 421 U. S. 289, 44 L.Ed.2d 172 (1975), the Texas system of limiting the right to vote in city bond elections to persons who have rendered (listed with tax officials) some real, mixed, or personal property for local taxation was determined to violate the Fourteenth Amendment's Equal Protection Clause.

The reasoning of the Supreme Court in these cases was followed in this state to find certain freeholder provisions of Article VII of the Florida Constitution (1968) to be contrary to the U.S. Constitution. Fair v. Fair, 317 F.Supp. 859 (M.D. Fla. 1970). In that case, a school board issue election limited to freeholders was invalidated.

The only exception to this unbroken string of cases upheld a water district board of directors selected in an election in which voters were allocated according to the assessed value of each voter's land. Salyer Land Co. v. Tulare Water District, 410 U.S. 719, 35 L.Ed.2d 659 (1973). The court found that because of its "special limited purpose and…the dispropriationate effect of its activities on landowners as a group. . ." the water district election was of sufficient "special interest" to a single group that the franchise could constitutionally be denied or limited to others. Id., at 728.

This very narrow exception has not been found applicable to property qualifications upon candidates for public elective office. A Georgia requirement that only freeholders could become members of a county school board was struck down as being invidiously discriminatory and violative of the Equal Protection Clause. Turner v. Fouche. 396 U.S. 346, 25 L.Ed.2d 567 (1969). There the Supreme Court stated:

> "(The plaintiffs) have a federal constitutional right to be considered for public service without the burden of invidiously discriminating disqualifications. The State may not deny to some the privilege of holding public office that it extends to others on the basis of distinctions that violate federal constitutional guarantees." Id.

This decision and the reasoning employed therein has been utilized in Florida and is dispositive of the question posed here. The U.S. District Court for the Southern District of Florida found a freeholder

requirement for candidates to the city commission of Belle Glade to be unconstitutional in light of the Turner decision. Anderson v. City of Belle Glade, 337 F.Supp. 1353 (S.D. Fla. 1971).

As applied to your particular question, the Anderson case is the law in the Southern District, which includes Broward County and the Port Everglades Authority district. The case appears applicable and controlling in the situation under question here.

Accordingly, a requirement that a person must be a freeholder in order to be a candidate for commissioner of the Port Everglades Authority is invidiously discriminatory and violative of the Equal Protection Clause of the Fourteenth Amendment. Based on the Anderson decision, an individual seeking to qualify as a candidate for such district commissioner cannot be denied ballot position for failure to be a freeholder. Your question is answered in the negative.

SUMMARY

An individual seeking to qualify as a candidate for commissioner of the Port Everglades Authority cannot be denied ballot position for failure to be a freeholder in the district.