

DE 78-30 - August 3, 1978

Candidate Residency; School Board; Qualification
ss. 99.032, 99.061, 99.092, 106.23, 230.04, 230.061, 230.10, F.S.;
ch. 77-175, Laws of Florida

To: Honorable Mary E. Morgan, Supervisor of Elections, Pasco County Courthouse, Dade City, Florida 33525

Prepared by: Division of Elections

You have requested an opinion of this office in answer to the following question:

"Must a candidate for school board member be a resident of the residence area for which he qualifies at the time he qualifies or at the time he takes office?"

Though school board candidacy is regulated by provisions of ch. 230, F.S., your question is asked in light of your duties and responsibilities as supervisor of elections under the election code, specifically s. 99.061, F.S., relating to qualifying procedures, and s. 99.092(2), F.S., relating to the certification of candidates' names to the Department of State. The Division of Elections may issue advisory opinions relating only to any provisions of the election code. s. 106.23(2), F.S. As your question concerns your responsibilities under that code, the division has the requisite jurisdictional authority to answer.

The residence requirement of school board members was once located in the election code. s. 99.032, F.S. (1975). It then provided that a candidate for the office of district school board member must have been a resident of the district from which he qualified for a period of at least six months prior to the qualifying date. Id. The same also applied to county commission candidates. Id.

The statute was never directly challenged by a school board candidate or member, though an unsuccessful attack was made on other statutes imposing certain residency requirements as being in excess of constitutional requirements. State ex rel. Askew v. Thomas, 293 So.2d 40 (Fla. 1974). The six month requirement for a county commission candidate was successfully challenged. Wilson v. Newell, 223 So.2d 734 (Fla. 1969).

In its effort to revise Florida's election laws, the 1977 legislature saw fit to remove all references to school board elections from the election code. s. 6, ch. 77-175, Laws of Florida. The residency requirements for school boards were determined to be better placed in ch. 230, F.S.. which is the district school system chapter of the education code.

It is there provided that each school district is to be divided into member residence areas "(f)or the purpose of nominating and electing school board members . . ." s. 230.061(1), F.S. One school board member serves from each residence area. s. 230.04, F.S. Residence in this area must be maintained throughout one's term of office. State ex rel. Askew v. Thomas, supra.

Despite the removal of school board candidates from s. 99.032, F.S., a residency requirement at qualifying is still imposed. The law reads:

"Each candidate who qualifies to have his name placed on the ballot of the general election shall be listed according to the school board member residence area in which he resides." s. 230.10, F.S.

Thus, a candidate submitting qualifying papers will be placed on the ballot as a candidate from the residence area containing his legal residence. Accordingly, your question is answered that the requirement for residence in the residence area must be satisfied at the time of qualifying, not at the time of assuming office.

But this raises the question as to your duty as the qualifying officer in the event a person qualifies who does not appear to satisfy the residency requirement.

The responsibility of the qualifying officer has in this state been regarded as being ministerial in nature. Such an official merely examines the face of the qualifying papers presented and, if in proper order, accepts them. Op. Att'y Gen. Fla. 076-130 (June 10, 1976). 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).

While that case concerned the authority of the Secretary of State to remove candidates from the ballot, its application here seems clear.

The qualifying officer may not look beyond the documents submitted to determine if a candidate is or is not eligible for the office he/she seeks. However, upon review of the papers themselves, should the qualifying officer, in this case the supervisor of elections, determine that an error appears thereon, the provisions of s. 99.061, F.S., should be invoked which state:

"Within 7 days after the closing of qualifying time or within 7 days after a candidate files his qualifying papers, whichever last occurs, the . . .supervisor of elections. . .shall notify a candidate by registered mail of any error in his papers or fees. Candidates notified shall have 72 hours from the time such notification is received, excluding Saturdays, Sundays, and legal holidays, to file with the appropriate qualifying officer any papers or fees necessary to correct any such error." s. 99.061(5), F.S.

Failure of the candidate to properly respond results in his/her removal from the ballot.

This "correction period" is the equivalent of an extension of the qualifying period for those who timely file. It is a safeguard to permit more careful scrutiny of a candidate's papers under more reasonable

circumstances than the often hectic time of presentment.

Therefore, should a supervisor receive the qualifying papers of a school board candidate which on their face indicate a discrepancy between the place of residence and the residence area district for which he/she is a candidate, under the holding in the Stone case noted above, the supervisor is without authority to assume (or even if actually known) him to be unqualified, and hence, cause his name to be stricken from the ballot. The better course, and all that can be presumed from the papers, is to conclude an error in preparing the qualifying papers and invoke the notification procedures of s. 99.061 (5), F.S. Should the candidate then submit papers which reflect no error, the supervisor's responsibility is at an end. Any further questioning of the candidate's eligibility must be in a judicial forum.

SUMMARY

A candidate for the office of school board member must be a resident of the member residence area at the time of qualifying as a candidate. The supervisor of elections, as qualifying officer, is without authority to look beyond the qualifying papers to determine a person's eligibility. Should an error be apparent on the face of the papers, the supervisor is to invoke the notification procedures of s. 99.061 (5), F.S. Only in the event of the candidate's failure to properly respond may the supervisor of elections remove his/her name from the ballot. Any other challenge to the candidate's eligibility to be on the ballot must be in court.