

DE 78-38 - September 1, 1978

**Candidates; Special Districts; Qualifying For Multiple Offices
ss. 99.012, 99.021, F.S.; chs. 63-269, 65-378, 70-80, 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

By your recent letter an advisory opinion of this office was requested pursuant to s. 106.23(2), F.S., in answer to the following question:

"May a person qualify as a candidate for more than one (1) special taxing district commissioner, when the terms of such offices run concurrently?"

As discussed below, your question is answered in the negative.

Recent opinions of this office and the Attorney General found the 1977 election law revision to have replaced special acts with regard to the procedures whereby persons qualify as candidates for district offices. DE 78-11 (January 30, 1978). As stated by the Attorney General:

". . .ch. 77-175 (Laws of Florida), represents a general revision of the entire Election Code (chs. 99-106, F.S.); and it seems to have been clearly intended to prescribe the only rule governing the subject matter provided for, such as the qualification of candidates and campaign and election of public offices, and the holding and conduct of, and campaign for, elections to elect public officers." Op. Att'y Gen. Fla. 078-38 (March 3, 1978).

Those opinions considered the revision's effect on special acts differing with general law. In DE 78-32 (August 11, 1978) this office followed the same reasoning in determining that the 1977 revision superseded election provisions of general law in conflict with that revision. It was there determined that the procedures for electing commissioners of road and bridge tax districts (created pursuant to ch. 153, F.S.) were governed by the Florida Election Code. As stated:

"The 1977 election code enactment operates as a total revision of the state's election laws. Its very title stated it was 'prescribing regulations for the qualification of candidates and campaign and election of public officers.'

. . .The inclusion of the work 'district' in various portions of this enactment clearly shows the legislative desire to bring special districts, such as road and bridge and water and sewer, within the general election laws." DE 78-32, supra, p. 7.

Thus, it appears to be in little doubt that district office elections are controlled by the general election

law found in the election code. Your specific question turns on the application of ss. 99.012(1) and 99.021(1)(a), F.S., to district office elections.

In 1962, the Supreme Court of Florida concluded that "multiple candidacies are not consistent with the public policy of this state." State ex rel Fair v. Adams, 139 So.2d 879, 881 (Fla. 1962). The case concerned an individual who sought to qualify with the secretary of state as a candidate for more than one office on the same ballot. The secretary refused to accept any additional qualifying papers in the absence of a withdrawal of those previously filed. Relying upon the dual office prohibition of the 1885 Constitution, Art. XVI, s. 15, Fla. Const. (1885), (which differs substantially from that contained in the present constitution), and the candidate's oath of s. 99.021, F.S. (1961). The specific issue before the Court in that case dealt with a state office. But the opinion recognized the confusion to the electorate resulting from an individual's name appearing as a candidate in several different races on the ballot. State ex rel. Fair v. Adams, supra, at 885.

The Legislature responded to the Adams decision at its next session. Upon the convening of the 1963 session, Senator Young introduced Senate Bill No. 109, which eventually became law and codified as s. 99.012(1), F.S. The title to the bill gives some indication of its application:

"An Act relating to amending chapter 99, Florida Statutes, by adding thereto sections .012 and .013 relating to the candidacies for public office; providing no candidate may seek two (2) offices which run concurrently . . ." (e.s.).

This language is reflective of the bill's application to all public offices, regardless of the level of government.

The bill also contained a section which later became the so-called Resign-to-Run Law. See s. 99.012 (2), F.S. (1977); enacted as ch. 70-80, Laws of Florida. However, this was deleted in the 1963 session by the Committee on Privileges and Elections. The first section prohibiting qualifying for more than one office at the same time remained intact and was subsequently enacted.

As approved it reads as follows:

"99.012. Individuals Seeking Public Office. No individual may qualify as a candidate for public office within the State of Florida whether such office be federal, state, county, or municipal, who is qualified as a candidate in the same primary or general election for any other office in the term of such other office or any part thereof runs concurrent to the office for which he seeks to qualify."

Also of significance is the fact that the candidate's oath is s. 99.021, F.S. (1961), which had been relied upon in the Adams decision, was amended. As a result, the oath reads that a candidate:

". . .has qualified for no other public office in the state, the term of which office or any part thereof runs concurrent to the office he seeks." s. 99.021(1)(j), F.S. (1963). (e.s.).

The use of the broad term "public office" in this portion of the bill should not be overlooked; particularly when reading the phrase "whether federal, state, county, or municipal" found in the first section of s. 99.012, F.S.

The wide application of the restriction of s. 99.012, F.S. (1963), is evident by action taken by the 1965 legislature to write a specific exception from the law's provisions for political party offices, ch. 65-378, Laws of Florida; codified s. 99.012(1), F.S. Such an enactment would have been unnecessary if the office listing noted above was exhaustive and, therefore, clearly not including political parties.

The 1970 legislature approved the Resign-to-Run Law. ch. 70-80, Laws of Florida. Its title likewise refers only to "public offices" and does not indicate any limitation to certain offices or exemptions therefrom, with the exception of political party offices. This law contains the phrase "whether state, county, or municipal" which is virtually identical to that adopted in 1963.

Prior to the legislative enactment of the Resign-to-Run Law, the Attorney General found the dual office holding prohibition of the 1968 Constitution to be inapplicable to district offices. In an opinion to the attorney for the Hardee County Hospital District Board he determined the provisions of Art. II, s. 5(a), Fla. Const. (1968) to be "confined to offices held under state, county, or municipal governments." Op. Att'y Gen. Fla. 069-49 (July 8, 1969), citing Town of Palm Beach v. City of West Palm Beach, 55 So.2d 566 (Fla. 1951), for the principle that district offices are neither state nor county officials.

However, the following year the question again arose as a result of the newly enacted Resign-to-Run Law. In a case arising in Hardee County involving the same district board considered in the Attorney General's opinion, the Second District Court of Appeal affirmed a circuit court's finding that the district board member had to resign in order to run for a concurrent county commission seat. Ballard v. Cowart, 233 So.2d 484 (2d D.C.A. Fla. 1970). The appellate court quoted with approval from the circuit court's order finding that a district office is an "elective or appointed office" within the meaning of ch. 70-80, Laws of Florida. Also of importance to the question being considered here the court further found:

"The term elective or appointive office exhausts the enumeration of the series, and the following term, viz., 'whether state, county, or municipal' does not in any way limit the exhaustive term, so that the doctrine of ejusdem generis has no application." Ballard, supra, at 485.

This decision was not appealed and has not been overruled.

The same year the Fourth District Court of Appeal found the Resign-to-Run Law to apply to a member of a regional planning council.. Orange County v. Gillespie, 239 So.2d 132 (4th D.C.A. Fla. 1970), cert, denied 239 So.2d 825 (Fla. 1970). In this decision, which was subsequent to the Supreme Court's upholding of the Resign-to-Run Law in Holley v. Adams, 239 So.2d 401 (Fla. 1970), this appellate court relied upon Ballard, supra, in finding the regional board member was subject to the law. The court stated:

". . .it appears to have been the legislative intent in enacting Chapter 70-80,. . .to cover elective and appointive officers at all levels of government. 239 So.2d at 134. (e.s.).

Conflicting therewith, the following year the Attorney General issued an opinion stating that a member of the governing body of a special tax district was not an "officer" within the purview of s. 99.012(2), F.S., and did not therefore have to resign in order to run for a state, county, or municipal office. Op. Att'y Gen. Fla. 071-329 (October 11, 1971). At virtually the same time, the 1969 opinion of the Attorney General that the constitutional dual officeholding prohibition did not apply to district officers was reaffirmed. Op. Att'y Gen. Fla. 071-324 (October 6, 1973).

However, in 1972, the Attorney General said a district office was a "political office" for the purposes of the testimonial affidavit law (s. 99.193, F.S. (1971)). In a seemingly implied reversal of a previous opinion, the holdings in Ballard, supra, and Gillespie, supra, were cited approvingly.

As stated above the resolution of these questions depends on a reading of the language of ss. 99.012(1) and 99.021(1), F.S. The former restricts a candidate to only one place on the ballot, and the later requires the candidate to swear he/she has qualified for no other office. After carefully reviewing the opinions of cases noted above and the statutory language it seems that district officers may have been, and are now, prohibited from qualifying as a candidate for more than one office at the same time.

Nothing in the legislative history of either subsections (1) or (2) of s. 99.012, F.S., indicates any intent to limit this application so as to exclude district officials. The use of the broad term "public office" must be assumed to have reflected the legislature's desire to include all officials.

Likewise, an appellate court decision (Ballard) occurring shortly after the enactment of the Resign-to-Run Law held district officers to be subject to its restrictions. No appellate court has to date differed with the Ballard ruling. Only the Attorney General in an opinion which appears out of place in light of Ballard and Gillespie, has ruled otherwise. It should also be noted that the Ballard decision is the controlling law in the Second Appellate District, which includes Pasco County.

The question of whether Ballard is or is not a correct decision is not one for this office to answer. In the absence of a judicial decision to the contrary, it should be followed. No persuasive reason has been put forth in any of the opinions of the Attorney General to indicate any rationale for ignoring this decision.

It is especially important that the Ballard court viewed the phrase "whether, state, county, or municipal" not to be exhaustive language, but rather a reflection of the legislature's intent to have the law apply at all levels of government. The exclusion of the word "district" does not appear to have been either intentional or resulting in an exclusion of such officers.

Accordingly, based on the foregoing discussion, this office sees neither the reason, nor authority, to ignore the Ballard decision and views it as the authority, together with the statutory language, for the finding that the prohibition against multiple candidacies by an individual on the same ballot is

applicable to district officers.

In the event of the filing by the same person of multiple candidate qualifying papers, the first received should be accepted until an express withdrawal is made. See State ex rel. Fair v. Adams, supra, at 885.

SUMMARY

Due to s. 99.012(1) and the candidate's oath (of s. 99.021(1)(a), F.S.), an individual may not qualify for more than one district office on the same ballot. The first qualifying papers received and accepted are valid until expressly withdrawn.