DE 80-27 - August 21, 1980

Residence Requirement For A County Commission Candidate

To: Mr. Jay A. Smith, Assistant Mayor, City of Vero Beach, Vero Beach, Florida

Prepared by: Division of Elections

This is in response to your request for advisory opinion pursuant to Section 106.23(2), Florida Statutes (1979). Your questions can be restated:

1. Must a candidate for the county commission in Indian River County District 5 be a resident of the district for which he qualifies as a candidate?
2. Is the residency requirement of Section 99.032, Florida Statutes (1979), met by a candidate who is a guest in someone's home in the district?

Section 99.032, Florida Statutes (1979), states:

> A candidate for the office of county commissioner shall at the time he qualifies, be a resident of the district from which he qualifies.

Quite clearly, the law sets forth a district residency requirement for a county commission candidate. The law expressly requires residence at the time of qualifying.

The members of the board of county commissioners are elected by the voters of the entire county, but a commissioner must reside in each of the commission districts. Article VIII, Section l (e), Florida Constitution of 1968. It was to insure compliance with this constitutional provision that the Legislature enacted Section 99.032, Florida Statutes (1979). The residency requirement is a continuous requirement as the Constitution provides that a "failure to maintain the residence requirement when elected or appointed" causes a vacancy to occur. Article X, Section 3, Florida Constitution of 1968. See DE Opinion 78-19 (March 21, 1978).

The courts have construed the term resident (residency) on numerous occasions. The generally accepted definition of residence is synonymous with domicile, "that place in which habitation is fixed, without any present intention of removing therefrom." Berry v. Wilcox, 44 Neb. 82, 62 N.W. 249 (1895), cited in Op. Atty. Gen. 070-97 (August 3, 1970). Florida law equates the phrase "legal resident" with permanent resident, domicile or permanent abode, as distinguished from temporary residence. Bloomfield v. City of St. Petersburg, 82 So. 2d 364 (Fla. 1955).

The key element of residency is the intent of the individual. Permanent residence is wherever a person intends to make a permanent domicile, which can be factually supported. Such factual support may be voter's registration, driver's licenses, tax receipts, receipt of mail or activities normally indicative of home life. See Op. Atty. Gen. 063-31 (March 20, 1963). All of the foregoing do not prove place of

legal residency but may be used as evidence of that fact. Accordingly, whether a candidate who is a guest in a home has established a residence there depends on the surrounding circumstances and the intent of the person.

The Division of Elections is without authority to look beyond a candidate's qualifying papers to determine a person's eligibility as a candidate. 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).

This decision applies to supervisors of election as well. See DE Opinion 78-30 (August 3, 1978). Had there been a discrepancy in the qualifying papers between the actual place of residency and the district residence area, the supervisor could have invoked the notification procedures of Section 99.061(5), Florida Statutes (1979). But if there was no discrepancy on the face of the papers, the supervisor is without authority to question the candidate's statement of compliance. Any other challenge to the candidate's eligibility to be on the ballot is a matter for the appropriate judicial tribunal.