DE 82-19--July 15, 1982

DUAL QUALIFICATION
DEMOCRAT AND REPUBLICAN
s. 106.23, F.S.

To: Mr. Joe Kotvas, P.0. Box 1110, Tampa, Florida 3360l

Prepared by: Division of Elections

This is an election advisory opinion issued pursuant to section 106.23, F.S., on essentially the following question:

> Can a person be qualified as a candidate and be placed on the ballot in both the democratic and Republican primary election?

Having reviewed all applicable provisions of Florida law, opinions of the Florida Attorney General and court decisions, both state and federal, it is my opinion that a person may not seek to qualify for nomination as a candidate for more than one political party.

Contrary to the assertions in your letter of May 28, 1982, there are express, provisions of Florida law which prohibit a candidate from seeking the nomination of more than one political party.

Section 99.021(b)(1-3), F.S., states:

> "In addition, any person seeking to qualify for nomination as a candidate of any political party shall, at the time of subscribing to the oath or affirmation, state in writing:
>
> 1. The party of which he is a member.
>
> 2. That he is not a registered member of any other political party and has not been a candidate for nomination for any other political party <u>for a period of 6 months preceding the general election for which he seeks to qualify.</u>
>
> 3. That he has paid the assessment levied against him, if any, as a candidate for said office by the executive commits of the party of which he is a member." (Emphasis adds)

This provision is separate and apart from the candidate's oath required by section 99.021(1)(a), F.S. It is an express statutory prohibition against multiple party nominations.

There are other provisions of Florida law which reinforce the position that multiple party nominations are prohibited. Section 101.021, F.S., states:

> "In a primary election a qualified elector is entitled to vote the official primary election ballot of the political party designated in his registration, and no other. It is unlawful for any elector to vote in a primary for any candidate running for nomination from a party other than that in which such elector is registered."

This provision establishes Florida as a "closed primary" state. Only persons showing their party affiliation are entitled to vote in a primary election and an elector may only designate one political party affiliation. If it is unlawful for an elector to vote for any candidate running for nomination from a party other than that in which the elector is registered, then every vote cast in the primaries for a multi-party candidate would be questionable and would likely be held illegal under section 101.021, F.S. I am not aware of any court decisions which have attacked the constitutionality of Florida's closed primary system, or which support your notion of multi-party candidacies. The concept of a closed primary has long been a cornerstone of Florida Election law and a declaration of party affiliation is a requirement for party nomination which has been upheld by the Florida Supreme Court State ex. rel Hall v. Hildebrand, et. al. 168 So. 531 (Fla. 1936);[1]

[1] I cannot comment on the election laws of other states as to multi-party candidacies; but none of the court cases cited in the request for opinion address the question raised in your letter. Please note that the California statutory citations relied upon are Jones v. McCollister 324 P. 2d 639 Calif. 1958) have bin repealed.

Aside frown Florida data law and court decisions, the Federal courts have upheld state laws which are designed to protect political parties from intrusion by persons espousing adverse political principles. See Ray v. Blair 343 U.S. 214, 72 Sup. Ct. 654 (1952). The Federal courts have consistently held that a ballot which is deceptive and confusing debases the rights of voters. Williams v. Rhodes 393 U.S. 23 (1968); Smith v. Cherry 489 F. 2d 1098 (Ca. 7 1974). Recently, a Federal District Court in Conneticut, relying upon these cases, overturned a state law which allowed a candidate to designate a party on his nomination petition regardless of whether the candidate is affiliated with the party or states its political view or ideology. The court refused to allow a ballot which would bear the name of candidates on the same row as John Anderson under the designation Anderson Coalition when no political association or affiliation existed between them. The court found that such a scheme engendered deception and confusion and would debase not only the candidate's right to freely associate with others of common political belief but the citizens' right to a clear and comprehensive ballot. Curry v. Kennelley No 11-80-403 (D. Conn. August 13, 1980).

If your aim is to appeal for a broad base of support in both political parties. I suggest that there are other methods; you can qualify as an independent candidate section 99.0955, F.S. (1981), or you may qualify as a write-in candidate. Section 99.023, F.S. (1975).

Summary

Florida law does not permit a person to qualify as a candidate and be placed on the ballot in both the Democratic and Republicans primary elections.