

DE 82-22-August 31, 1982

**QUALIFYING - s. 99.092;
119.01 and 98.161, F.S. (1981)**

*To: Honorable Kurt S. Browning, Supervisor of Elections, Pasco County Courthouse,
705 East Live Oak Avenue, Dade City, Florida 33525*

Prepared by: Division of Elections

This responds, pursuant to s. 106.23(2), Florida Statutes (1981), to your request for an opinion on substantially the following questions:

1. If an error is found in a candidate's qualifying papers after the qualifying period has lapsed, is the Supervisor of Elections charged with the responsibility of retaining the qualifying fee submitted by such candidate, or is the fee to be returned?
2. If the answer to question 1 provides that the Supervisor of Elections retains the fee, is this fee to be submitted to the County Executive and the State Executive Committees as provided by statute, or retained by the Supervisor of Elections pending settlement of the dispute?
3. After notification to the candidate of an error in the qualifying papers, is the candidate entitled to receive the qualifying papers, including the financial disclosure form, from the Supervisor of Elections upon request of the candidate after the close of the qualifying period?

In order to answer your question it is necessary to discuss the responsibility of the qualifying officer in accepting qualifying papers. In DE 78-30 this office stated:

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. 076-30 (June 10, 1976).

If on review of the papers themselves the qualifying officer should determine that an error appears thereon, the provisions of s. 99.061(6), F.S., should be invoked which provide:

"Within 7 days after the closing of qualifying time or within 7 days after a candidate files his qualifying papers, whichever last occurs, the Department of State or the supervisor of elections, as the case may be, 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.”

The above provision permits the qualifying officer to accept corrections of qualifying documents discovered prior to the termination of the qualifying period or the extension of the qualifying period (“correction period”) for those who timely file. However, once the extended qualifying period has passed, the qualifying officer is without authority to take any action on errors that may be discerned in the qualifying papers. *Battaglia v. Adams*, 164 So.2d. 195. (Fla. 1964). In *Battaglia* the Florida Supreme Court in quoting from AGO's 064-32 and 064-37 said at page 199:

Once the deadline for filing has passed no further alterations or changes can be made in a candidate's qualification papers.

This court has uniformly held that a candidate's qualification papers must be completed and filed within the time prescribed by statute, and that any errors or omissions cannot be corrected after the filing deadline has passed. See *State ex rel. Taylor v. Gray*, 25 So.2d. 492 (Fla. 1946); *State ex rel. Vinning v. Gray*, 17 So.2d. 288 (Fla. 1944).

Thus, the qualifying officer, in this case the Supervisor of Elections, has no authority to take any action on errors in qualifying papers after the qualifying period has ended. Any corrections or changes subsequent to the closing of the qualifying period must be made by appropriate challenge through a judicial forum. See *State ex rel. Shevin v. Stone*, 279 So.2d 17 (Fla. 1972); De 78-30, dated August 3, 1978.

Regarding question 1, s. 99.092(1), F.S. (1981), states in pertinent part that “No qualifying fees shall my returned to the candidate unless he withdraws his candidacy before the last date to qualify.” (Emphasis supplied.) In view of the clear legislative prohibitions, it must be concluded that the Supervisor of Elections is without authority to return the qualifying fees for any reason other than those statutorily enumerated. AGO 074-340, dated October 31, 1974. Thus, as Supervisor of Election, you have the responsibility of retaining all qualifying fees once filed. These fees may only be returned to the candidate as statutorily provided or judicially directed.

Your first question is answered accordingly.

Based on the discussion in question 1, qualifying fees retained by the Supervisor of Elections must be transferred in accordance with s. 99.092, F.S., unless otherwise legislatively or judicially directed.

Your second question is answered accordingly.

For the reasons stated below, your third question is answered in the negative.

Section 119.01, F.S. (1981), states:

- (1) “Public records' means all documents, papers, letters, maps, books. . .or other material, regardless of form or characteristics, made or received pursuant to law or ordinance, or in connection with the transaction of official business by any agency.” (Emphasis supplied.)

As Supervisor of Elections you are charged with the duty of preserving and maintaining an accurate, honest, and dependable registration and election record. State ex rel. Norman v. Holmer, 160 Fla. 434, 35 So.2d 396 (Fla. 1948). Consequently, the Supervisor of Elections is the custodian of qualifying papers for various local elections. On receipt of such papers, they become public records and must be maintained as such. Further, s. 98.161, F.S., mandates the Supervisor to "preserve statements and other information required to be filed with his office pursuant to chapter 106 for a period of 10 years from date of receipt.

Therefore, it is the opinion of this office that once a Supervisor of Elections receives qualifying papers as part of his or her official duties, they become public records and must be preserved and maintained as such. Hence, these papers may not be returned to the person qualifying without legislative or judicial authority to do so.

SUMMARY

A qualifying officer has no authority to take any action on errors in qualifying papers after the qualifying period has ended; any corrections or changes subsequent to the qualifying period must be made by appropriate challenge through a judicial forum. A qualifying officer is without authority to return qualifying fees for any reason other than those statutorily provided or judicially directed.

Qualifying fees retained by the qualifying officer must be transferred in accordance with s. 99.092, F.S., unless otherwise legislatively or judicially directed.

Qualifying papers when presented to the Supervisor of Elections become "public records" and must be preserved and maintained as such. These papers may not be returned to the person qualifying without legislative or judicial authority to do so.