



## FLORIDA DEPARTMENT *of* STATE

**CHARLIE CRIST**  
Governor

**KURT S. BROWNING**  
Secretary of State

July 15, 2009

Ms. Priscilla A. Thompson  
City of Miami  
Office of the City Clerk  
3500 Pan American Drive  
Miami, Florida 33133

**A statute addressed in this opinion  
has changed. Please consult current  
Florida law.**

RE: DE 09-05  
Qualifying – Role of Qualifying Officer;  
Candidate nickname; §§ 99.021(1), 99.061(7),  
100.3605(1), and 104.011(1), Florida Statutes

Dear Ms. Thompson:

This letter responds to your request for an advisory opinion. You are the City Clerk for the City of Miami and serve as the filing officer for municipal candidates submitting qualification paperwork for Miami's municipal elections; therefore, the Division has the authority to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2008).

You ask essentially the following questions:

1. Does the filing officer have the authority to reject qualification papers which on their face appear in proper order and which comply with applicable qualifying requirements if an opposing candidate challenges the veracity of the documents' contents?
2. What level of scrutiny must a filing officer apply to ascertain whether a prospective candidate legitimately has a nickname that is eligible for placing on the ballot?

You also ask a third question: "Is the City Clerk, when acting as both the election officer and notary, compelled to ascertain the veracity of the statements sworn to by the prospective candidate before she notarizes the candidate's documents?" To the extent that this question asks about a notary public's duty, the Division of Elections does not have the authority to respond because an answer would involve an interpretation of chapter 117, Florida Statutes (2008). The Division's authority is limited to provide advisory opinions about Florida's Election Code (chapters 97 - 106, Florida Statutes). If your third question is not adequately addressed in the Division's response to Question #1, you may wish to request an opinion from Florida's Attorney

General regarding a notary public's duty to verify the accuracy of the information being notarized.

With regard to Question #1, the short answer is "no."

Your letter states that a candidate asked you to disqualify an opposing candidate because the opposing candidate had filed an affidavit of financial hardship "despite [his] ownership in a home conservatively valued at \$750,000 as evidenced in his Statement of Financial Interests."

Under section 99.061(7), Florida Statutes (2008), in order for a candidate to be qualified for office, certain items must be received by the filing officer before the qualifying period ends. Such items include the candidate oath required by s. 99.021(1), Florida Statutes (2008), in which the candidate must appear before an officer authorized to administer oaths, and either swear or affirm, among other statements, "that he or she is qualified to hold the office to which he or she desires to be nominated or elected." Prior opinions by the Division of Elections,<sup>1</sup> the Attorney General,<sup>2</sup> and the Florida Supreme Court<sup>3</sup> consistently state that a filing officer to whom candidates submit their qualifying papers performs a purely ministerial function and that the filing officer must accept completed qualifying papers submitted under oath or affirmation. The most relevant and succinct pronouncements come from the Florida Supreme Court which has twice addressed the Secretary of State's role as the filing officer for candidates for the Florida House of Representatives (which we believe is analogous to the role of other filing officers for candidates under the Election Code). First, the court stated:

[T]he Secretary of State is without authority to pass judgment on questions de hors<sup>4</sup> the filing instruments concerning the qualifications of candidates. That is a question that can only be decided by a court of competent jurisdiction.<sup>5</sup>

Thereafter, the court 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. . . .<sup>6</sup>

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<sup>1</sup> *Division of Elections Opinion 04-05* (May 27, 2004); *Division of Elections Opinion 00-09* (August 22, 2000); *Division of Elections Opinion 82-22* (August 31, 1982); *Division of Elections Opinion 80-27* (August 21, 1980); and *Division of Elections Opinion 78-305* (August 3, 1978).

<sup>2</sup> *Op. Att'y Gen. Fla. 76-130* (1976); *Op. Att'y Gen. Fla. 74-293* (1974); *Op. Att'y Gen. Fla. 72-224* (1972); and *Op. Att'y Gen. Fla. 58-231* (1958).

<sup>3</sup> *Shevin v. Stone*, 279 U.S. 17 (Fla. 1972); *Cherry v. Stone*, 265 So. 2d. 56 (Fla. 1972); *Hall v. Hildebrand*, 168 So. 531 (Fla. 1936); and *Davis v. Crawford*, 116 So. 41 (Fla. 1928).

<sup>4</sup> "Dehors" is a French term used to mean "outside" or "beyond the scope of." *Black's Law Dictionary* (8<sup>th</sup> ed. 2004).

<sup>5</sup> *Cherry v. Stone*, 265 So. 2d 56, 58 (Fla. 1972).

<sup>6</sup> *Shevin v. Stone*, 279 So. 2d 17, 22 (Fla. 1972).

We adhere to these opinions. A filing officer governed by Florida's Election Code may not reject qualifying documents when they appear complete on their face and are properly executed under oath or affirmation. An opposing candidate's recourse to question the correctness of an opposing candidate's qualifications is to challenge the qualifications in a competent court of law.

The rationale explained above would not allow you as the qualifying officer to go beyond the four corners of the financial hardship affidavit submitted as part of the candidate's qualifying paperwork in determining the veracity of the underlying facts in the affidavit. However, our response to Question #1 is necessarily limited to the application of the Election Code and may not cover the particular duties of a municipal filing officer specified by a municipal charter or ordinance. Section 100.3605, Florida Statutes (2008), permits a municipality to change the applicability of any provision of the Election Code that does not expressly apply to municipalities. Section 100.3605(1) states:

The Florida Election Code, chapters 97-106, shall govern the conduct of a municipality's election in the absence of an applicable special act, charter, or ordinance provision. No charter or ordinance provision shall be adopted which conflicts with or exempts a municipality from any provision in the Florida Election Code that expressly applies to municipalities.

As an attachment to your request, you included provisions of Miami's municipal charter and code. The Division of Elections has no authority to interpret provisions of a municipal charter or code; therefore, the Division does not render an opinion regarding whether your charter and code impose any greater duty on you than that placed upon a filing officer governed solely by Florida's Election Code.

Regarding Question #2, the short answer is that a filing officer may require a candidate to make a satisfactory showing that the candidate has been generally known by the nickname or the candidate has used the nickname as part of the candidate's legal name.

Your request for an advisory opinion states that a candidate had listed his name on the candidate oath form as he desired it to appear with "Ambassador" between his first and last names, with the candidate indicating that "Ambassador" was his nickname, not a title. An opposing candidate questioned the appropriateness of this nickname being included on the ballot alleging that you had no proof before you that the candidate used this nickname.

The Election Code and Florida case law are silent regarding the definition or the wording of a candidate's name, except section 99.021, Florida Statutes (2008), which instructs the candidate as part of the candidate's oath to "please print name as you wish it to appear on the ballot." This statement seemingly provides the candidate with freedom to determine how he or she wants the name to appear. However, we believe the definition of "name" in the statute should be given its ordinary and usual meaning, that is, the designation by which the person is commonly known and

others call him or her.<sup>7</sup> Therefore, the name should not be one made up solely for purposes of the election.<sup>8</sup>

In *Division of Elections Opinion 86-06* (May 1, 1986), we opined that

it has been determined that any name by which a candidate is known is sufficient on a ballot, and a person is legally permitted to have printed on the ballot the name which the candidate has adopted and under which he or she transacts private and official business, 29 C.J.S. Elections §161.

*With regard to the use of nicknames*, the Florida Attorney General determined many years ago that *there appears to be no objection to including the nickname of a candidate by which he or she is generally known, along with the candidate's name, on the ballot.* [*Op. Att'y Gen. Fla. 51-343 (1951).*] . . .

*Election officials, however, may be justified in refusing to print on the ballot a candidate's nickname when it is not shown that the nickname ever was used by the candidate as part of his legal name*, and such officials may be equally justified in refusing to print on the ballot a candidate's choice of a name which has not been adopted by him or her and under which the candidate has not transacted private and official business. See C.J.S. Elections §161.

In summary, ordinarily a candidate must use his or her Christian or given name and surname, unless it can be shown that the candidate is known by another name which he or she has adopted and under which he or she transacts private and official business. In addition, *a candidate may use a legitimate nickname . . . .* [*Emphasis supplied.*]

We adhere to these statements. Notwithstanding the historical view that the filing officer performs a ministerial function, the 1986 opinion recognized that a filing officer may require a candidate to make a satisfactory showing that he or she is generally known by the nickname or that the candidate has used the nickname as part of his or her legal name. As discussed with respect to Question #1, a municipality may by charter or ordinance prescribe more specific duties for the filing officer in municipal elections regarding the verifications of nicknames. See § 100.3605(1), Fla. Stat. (2008).

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<sup>7</sup> 26 Am. Jur. 2d *Elections* § 293 (2009).

<sup>8</sup> See, e.g., *Planas v. Planas*, 937 So. 2d 745 (Fla. 3DCA 2006), where the court disqualified a candidate when he chose a name for ballot designation that was similar to the name by which the incumbent was widely known and which name had not been adopted or used by the candidate to transact private and official business. The court held that a candidate's use of "a stratagem clearly intended to deceive and confuse voters with the incumbent ... simply cannot be permitted."

SUMMARY

A filing officer governed by Florida's Election Code may not reject qualifying documents when they appear complete on their face and are executed under oath or affirmation. An opposing candidate's recourse to question the correctness of an opposing candidate's qualifications when the opponent has sworn or affirmed that he or she is qualified to hold the office is to challenge the qualifications in a competent court of law.

Before a candidate's nickname is printed on the ballot, a filing officer may require a candidate to make a satisfactory showing that the candidate has been generally known by the nickname or the candidate has used the nickname as part of the candidate's legal name.

Notwithstanding the above statements, a municipality may by charter or ordinance under section 100.3605(1), Florida Statutes (2008), prescribe more specific duties for the municipal filing officer regarding the verification of a candidate's qualifying papers or use of a nickname in its elections.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Palmer', with a long horizontal stroke extending to the right.

Donald L. Palmer  
Director, Division of Elections