



FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KURT S. BROWNING
Secretary of State

January 11, 2012

The Honorable Vicki P. Cannon
Supervisor of Elections, Nassau County
96135 Nassau Place, Suite 3
Yulee, Florida 32097-8635

RE: DE 12-01 Candidates; Qualifying; Petitions – Member of cancelled political party qualifying as a candidate for another political party; validity of candidate petitions designating the cancelled political party; role of qualifying or filing officer -- §§ 99.021(1)(b)2., 99.061(7)(c), & 99.095, Florida Statutes

Dear Supervisor Cannon:

This letter responds to your request for an advisory opinion. As the Nassau County Supervisor of Elections, you desire answers to questions about the 2011 change to section 99.021(1)(b)2., Florida Statutes, in which a candidate seeking to be a party nominee must not have been a registered member of any other political party for a specified period before the beginning of the qualifying period. Specifically, you question how the revised statute applies to a candidate running as a member of a minor political party whose registration as a political party has been cancelled. The answers to your questions will enable your office to provide accurate advice to the candidate and assist you in your duties as the filing officer for such candidates. In particular, the background for your questions is that a current candidate for Nassau County Sheriff had filed as a member of the Tea Party (TEA), which party voluntarily terminated its registration with the Division of Elections on October 13, 2011. (Thereafter, another group formed a new party, the Tea Party of Florida (TPF), which became a registered minor political party in Florida with the Division of Elections on October 26, 2011.) You essentially inquire:

1. May the candidate of a cancelled party properly qualify as a candidate of any political party if the candidate was a registered member of the cancelled party within 365 days before the beginning of the qualifying period preceding the general election for which the candidate was seeking to qualify?
2. If such a candidate may not properly qualify as a candidate of any political party, what options exist for the candidate to qualify?

3. If such a candidate had already collected candidate petitions containing the cancelled political party's designation, are those petitions valid for the candidate qualifying via the petition method?

4. If the answer to Question 1 is in the negative and the candidate swears or affirms on the candidate oath form (Form DS-DE 24) for candidates with party affiliation in the "Statement of Party" portion that the candidate has not been a registered member of any other political party for 365 days before the beginning of qualifying preceding the general election for which the candidate seeks to qualify, what is the filing officer's responsibility in accepting the qualifying paper or reporting any potential violation?

With regard to the first question, section 99.021(1)(b), Florida Statutes (2011), provides: "[A]ny 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: ... 2. That the person has not been a registered member of any other political party for 365 days before the beginning of qualifying preceding the general election for which the person seeks to qualify." The wording of the statute is plain on its face and no exception exists within the statute, nor does the Election Code provide that the section is inapplicable to a person whose political party was cancelled voluntarily or involuntarily pursuant to sections 103.095(5) or (6), Florida Statutes (2011). Therefore, if a candidate was a registered member of a political party within the 365-day period before the beginning of qualifying preceding the general election for which the candidate seeks to qualify and that political party's registration is cancelled within that time period, the candidate may not truthfully attest to the statement required by section 99.021(1)(b)2., Florida Statutes (2011), that he or she was not a registered member of another political party during the applicable time period. Thus, a candidate in such a situation could not *properly* qualify for nomination as a candidate of any political party until the candidate can *truthfully* execute the required statement.

With regard to your second question, although the candidate faced with the situation in the response to Question 1 could not *properly* qualify as a political party candidate without violating the required attestation in section 99.021(1)(b)2., Florida Statutes (2011), the candidate would have the options of either qualifying as a no-party-affiliation candidate (even if the candidate had joined another party within the applicable 365-day period) or as a write-in candidate. If the candidate desires not to exercise either of these options and persists in wanting to *properly* qualify as a political party candidate, the candidate would have to wait to qualify for an election wherein he or she could *truthfully* execute the statement contained in section 99.021(1)(b)2., Florida Statutes (2011).

With regard to your third question, the candidate petition form (Form DS-DE 104), promulgated pursuant to section 99.095(2)(c), Florida Statutes (2011), and incorporated in Rule 1S-2.045, Florida Administrative Code, requires the registered voter to specify on the petition whether the candidate's name is to be placed on the ballot as either a nonpartisan, no party affiliation, or a designated party candidate. If a candidate has collected petitions specifying that the candidate's name be placed on the ballot as a

candidate for a defunct political party, the petitions may not be verified as valid to permit the candidate to avoid paying any applicable qualifying fee and party assessment. Nor may the petitions be used to qualify the candidate as a no-party-affiliation candidate because the statement on the petition form itself indicated that the voter desired the candidate be listed on the ballot as the designated political party's candidate. In the factual scenario you present, the candidate essentially assumed the risk that his or her political party would continue to exist during the election cycle.

With regard to your final question, a filing officer performs a purely ministerial function. I refer you to *Division of Elections Opinion 11-05* (November 10, 2011). Its summary states:

The qualifying officer's role is purely a ministerial one. The qualifying officer is not to look beyond the face of the qualifying papers to determine if the person is a qualified candidate. If the qualifying papers are complete on their face (including whether items that must be verified have been properly verified pursuant to section 92.525(1)(a), Florida Statutes (2011)), even when the qualifying officer is clearly aware that the candidate does not meet constitutional or statutory requirements for the office, the qualifying officer should qualify the candidate and place the candidate's name on the ballot; thereafter, it is up to a court of competent jurisdiction in a lawsuit brought by a proper party to decide if the candidate is qualified.

So, even if a candidate falsely attests to the statement required by section 99.021(1)(b)2., Florida Statutes (2011), your duty as a ministerial officer under section 99.061(7)(c), Florida Statutes (2011), is to accept the document and qualify the candidate if all of the candidate's qualifying papers are complete on their face. As stated in *Division of Elections Opinion 11-05* (November 10, 2011), "However, this statement is not meant to preclude the qualifying officer from advising a candidate either before or at the time of the candidate's submitting the qualifying papers that the person does not satisfy the requirements to qualify for or to hold the office being sought." Whether you as the filing officer either report a knowingly false statement by a candidate to anyone or decide to institute a lawsuit yourself challenging the qualifications of a candidate is a matter left to your discretion, but we believe that any affirmative action by you which goes beyond your ministerial role may be problematic. We believe it best to leave any action to initiate disqualification of a candidate whose qualifying papers are complete on their face to other interested persons and parties. You fulfill your ministerial role as a filing officer when you are satisfied that all of a candidate's qualifying papers are properly completed on their face without looking or going beyond the contents of the documents.

SUMMARY

If a candidate was a registered member of a political party within 365 days before the beginning of qualifying preceding the general election for which the candidate seeks to qualify and that political party's registration is cancelled within that time period, the candidate may not truthfully attest to the statement required by section 99.021(1)(b)2., Florida Statutes (2011), that he or she was not a registered member of another political party during the applicable time period. Thus, a candidate in such a situation could not

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properly qualify for nomination as a candidate of any political party until the candidate can *truthfully* execute the required statement. However, a candidate faced with this situation may either qualify as a no-party-affiliation candidate (even if the candidate had joined another party within the applicable 365-day period) or as a write-in candidate. Also, if a candidate has collected petitions specifying that the candidate's name be placed on the ballot as a candidate for the defunct political party, the petitions may not be verified as valid to permit the candidate to avoid paying any applicable qualifying fee and party assessment.

If a candidate falsely attests to the statement required by section 99.021(1)(b)2., Florida Statutes (2011), the filing officer's duty as a ministerial officer under section 99.061(7)(c), Florida Statutes (2011), is to accept the document and qualify the candidate if all of the candidate's qualifying papers are complete on their face. A filing officer fulfills his or her ministerial duty when the filing officer is satisfied that a candidate's qualifying papers are properly completed on their face without looking or going beyond the contents of the documents. Any action to initiate disqualification of a candidate whose qualifying papers are complete on their face would be best left to other interested persons and parties.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gisela Salas", with a horizontal line underneath.

Dr. Gisela Salas
Director, Division of Elections