

May 27, 2004

The Honorable Sylvia D. Stephens
Supervisor of Elections
Jackson County
PO Box 6046
Marianna, Florida 32447-6046

Re: DE 04-05
Felon Civil Rights
Section 97.041, Florida Statutes; Voter Registration
Section 99.061, Florida Statutes; Qualifying

Dear Ms. Stephens:

This is in response to your request for an advisory opinion regarding the civil rights of convicted felons and their right to run for office. You are the Supervisor of Elections for Jackson County, and pursuant to section 106.23(2), Florida Statutes, the Division of Elections has authority to issue an opinion to you.

You ask the following questions:

- (1) If a person presents documentation that his civil and political rights have been granted and a pardon has also been issued by a state other than Florida where the felony occurred, may he then register to vote?
- (2) May that person also qualify as a candidate for county office?
- (3) Are there any provisions against him qualifying for Sheriff although his right to possess firearms has not been restored?

The short answer to your first question is yes. The Florida Constitution and statutes require that convicted felons not be allowed to vote unless their right to vote has been restored. Florida law only requires that the persons registering to vote sign an oath affirming that if they are convicted felons, they have had their rights restored.

The short answer to question two is a qualified yes. As supervisor of elections your duties regarding candidate qualification are only ministerial, and you are required to accept qualifying papers from any person as long as the documents, on their face, meet the requirements.

Your third question requires interpretation of statutory provisions existing outside of the Election Code and thus the Division does not have the authority to address it. The office of the Attorney General is the entity with statutory authority to address the third question.

Article VI, section 4(a) of the Florida Constitution provides that no person convicted of a felony in the state of Florida or in any other state shall be qualified to vote or hold office in Florida until his or her civil rights are restored. Section 97.041, Florida Statutes, reiterates the constitutional mandate. In light of the foregoing, question number one is answered in the affirmative. Felons who have had their rights restored, whether they were convicted in Florida or in another state, do not need to present evidence of restoration of rights at the time of application for voter registration. Checking the appropriate box on the voter registration application representing that although they are convicted felons, their civil rights have been restored, and signing the oath included in the application affirming that the information provided is correct, is sufficient. Such representations are all that is required under the Florida election laws.

In response to your second question, and as cited above, the Florida Constitution prohibits a convicted felon from holding office until his or her civil rights have been restored. As stated in the Division of Elections' opinion DS DE 82-22, the qualifying officer's responsibilities are ministerial in nature. The qualifying officer is to examine the face of the qualifying papers and if it is determined that they are in proper order, the papers must be accepted. Therefore, if the person wishing to qualify as a candidate for office submits papers reflecting that he or she is qualified to hold the office, the supervisor of elections must accept those papers. The determination of whether the person wishing to qualify for the office is in fact eligible to qualify for the particular office is outside the scope of the supervisor of elections' ministerial duties as qualifying officer.

In response to your final question, the Division of Elections does not have authority to interpret laws existing outside of the Election Code. Statutes dealing with qualifications for the office of county sheriff including whether a sheriff is required to be able to possess firearms, fall within that category. You may wish to request further interpretation of section 790.23, Florida Statutes, and of any other applicable statutes, from the office of the Attorney General.

SUMMARY

The Florida Constitution and statutes require that convicted felons not be allowed to vote unless their right to vote has been restored. Those persons convicted of felonies outside of Florida whose voting rights were restored by the state wherein the felony was committed, may register to vote in Florida. No evidence of the civil rights restoration is required at the time of registration.

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Secondly, the qualifying officer has the duty to accept qualifying papers that, on their face, meet the requirements for qualification. Finally, the Division of Elections does not have authority to interpret statutory provisions outside the scope of the Election Code.

Sincerely,

Edward C. Kast
Director, Division of Elections

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