

DE 78-18 - March 21, 1978

**Qualifying By Alternative Method; Governor/Lt. Governor
ART. IV, S. 5, FLA. CONST. (1968); SS. 99.092 and 99.095, F.S.**

To: Mrs. Eileen Sullivan, P.O. Box 254, Gainesville, Florida 32602

Prepared by: Division of Elections

By your letter of February 8th you have requested an opinion in answer to the following question:

"May I, as the candidate for Governor, use the petition method (of qualifying) without including the name of the Lieutenant Governor?"

While it is not clear from your question, I understand you to be referring to the petition form itself during the time it is circulated for signatures.

You have elected to seek ballot position on the Democratic gubernatorial primary ballot by the alternative, or as better known, petition method. The procedure for such method is outlined in s. 99.095, F.S.

The statute requires a candidate to utilize petition forms provided by that candidate's appropriate qualifying officer. In the case of a gubernatorial candidate that officer is the Secretary of State. Such forms are provided once an "undue burden" oath has been executed by the candidate and presented to the filing officer. The candidate's designation of campaign depository and appointment of treasurer must also be filed at this time.

Candidates for the office of governor and lieutenant governor are constitutionally required to form "joint candidacies in a manner prescribed by law so that each voter shall cast a single vote for a candidate for governor and a candidate for lieutenant governor running together." Art. IV, s. 5(a), Fla. Const. (1968). The law provides that each candidate for governor and lieutenant governor shall pay a separate filing fee. s. 99.092(3), F.S.

With regard to nominating petitions, the election law states that candidates for the offices of governor and lieutenant governor forming joint candidacies shall "use the same nominating petition for both candidates." s. 99.095(3), F.S. The question is if the lieutenant governor candidate must be named on the petition initially or be named later.

The legislature has provided two methods by which candidates for governor and lieutenant governor might obtain ballot position. By its very title, the petition method is provided as an "alternative method" for those unable to pay the monetary filing fee. When two different methods are provided by the legislature, it must be assumed they are equal and that one is not made more burdensome than the other, nor impose some unreasonable condition or requirement not likewise imposed by the other

method.

It is with this in mind that the two statutory schemes for qualifying should be examined with regard to the designation of the lieutenant governor running mate forming a joint candidacy with a gubernatorial candidate. For a gubernatorial candidate qualifying by paying a filing fee, his/her running mate is not required to be disclosed until the time of qualifying in July prior to the election. There is no indication of any contrary legislative intent concerning candidates utilizing the petition method. To require disclosures of the running mate at the time of filing the undue burden oath or be on the petition cards would be imposing a discriminatory condition upon a "petition" candidate which is not being applied to that person capable of paying the filing fee. Accordingly, a gubernatorial candidate seeking ballot position need not name a lieutenant governor running mate until the filing of qualifying papers.

The petition used by the gubernatorial candidate is sufficient to obtain ballot position for the lieutenant governor. The payment of a filing fee or execution of an undue burden oath by the running mate of a "petition" candidate is not required. While disclosure of the running mate is not mandated until the time of qualifying, nothing in the election law prohibits or restrains the announcement thereof prior to that time.

Your question is therefore answered in the affirmative.

SUMMARY

A candidate for governor may seek position on a party primary ballot by the petition method without including the name of the lieutenant governor running mate on the undue burden oath or petition form. The lieutenant governor is not required to be disclosed prior to the actual filing of qualifying papers.