

DE 78-19 - March 21, 1978

**Residency Requirement; County Commissioner
ART. VIII, S. 1(3) & ART. X,
S. 3, FLA. CONST. (1968)
SS. 99.032, F.S. (1977)**

To: Honorable Neil T. Kinnear, Jr., Supervisor of Elections, Room 212, Hernando County Courthouse, Brooksville, Florida 33512

Prepared by: Division of Elections

You have requested an opinion of this office in answer to substantially the following question:

Does the residency requirement for a candidate for county commissioner continue beyond qualification and through the term of office?

Your question is answered in the affirmative.

A candidate for the office of county commissioner is required at the time of filing his/her qualifying papers to be a resident of the commission district from which he qualifies, s. 99.032, F.S. (1977). This statute was amended by the 1977 legislature to delete a previously mandated six months prior residence which was invalidated by the courts. Wilson v. Newell, 223 So.2d 734 (Fla. 1969). The law was also amended to expressly require residence at the time of qualifying. By doing so the legislature has removed the office of county commissioner from the doctrine that qualification for office are required to be met at the time of election. State ex rel. Fair v. Adams, 139 So.2d 879 (Fla. 1962); Davis ex rel. Taylor v. Crawford, 95 Fla. 338, 116 So. 41 (Fla. 1928); Op Atty Gen. 074-293 (September 23, 1974). This office is the only one required by statute to be a resident at the time of qualifying.

The members of the board of county commissioners are elected by the voters of the entire county, but one commissioner must reside in each of the commission districts. Art. VIII, s. 1(3), Fla. Const. (1968). It was to insure compliance with this constitutional requirement that the legislature enacted s. 99.032, F.S., described above.

It is clear that the statute imposes a residency requirement at the time of qualifying as a candidate for county commissioner. This is a continuing requirement as the constitution provides that a "failure to maintain the residence requirement when elected or appointed" causes a vacancy in office to occur. Art. X, s. 3, Fla. Const. (1968). The Supreme Court has held that the failure of a school board member to maintain residency during her term of office created a vacancy. State ex rel. Askew v. Thomas, 293 So. 2d 40 (Fla. 1974).

Accordingly, it seems clear from the state constitution and Supreme Court's decisions that an initial

residency requirement is a continuing one and the failure to maintain throughout the term of office creates a vacancy.

A county commissioner must maintain residence in the district from which elected for the duration of the term of office, otherwise a vacancy in office is created.