

DE 78-26 - May 26, 1978

Candidate Qualification; Political Affiliation
ss. 97.021, 99.061, 99.0955, 105.031, F.S.

To: Mr. Herb Harmon, Executive Director, Republican Party of Florida, P.O. Box 311, Tallahassee, Florida 32302

Prepared by: Division of Elections

By your letter of May 12, 1978, an opinion of this office was requested in answer to substantially the following question:

Can an individual who has filed his letter of intent along with the depository and treasurer designation change party affiliations between May 7 and the time for qualifying without violation of the required candidate oath?

The letter of intent referenced in your letter is assumed to be the appointment of treasurer and designation of depository, including the specific designation of depository, including the specific designation of office sought, filed by the candidate with the officer before whom that candidate formally qualifies. In the case of federal and state-wide officials, legislators, judges, and multi-county district officials that officer is the secretary of state, ss. 99.061(1) and 105.031(1), F.S. County and other district officials qualify with the appropriate supervisor of elections, s. 99.061(2), F.S. The time period during which the candidate files his/her qualifying papers is between noon of the 63rd day prior to the first primary election and noon of the 49th day prior to the first primary. *Id.* In 1978 these dates are July 11th and July 25th respectively.

All such candidates, other than those for judicial office, must at the time of qualifying execute the candidate's oath required by s. 99.021, F.S. Those persons seeking to qualify for nomination as candidate of any political party shall also state in writing:

"2. That he is not a registered member of any other political party and has not been a candidate for nomination for any other political party for a period of 6 months proceeding the general election for which he seeks to qualify."
s.99.021(1)(b), F.S. (e.s.).

This year the six month period begins on May 7, 1978. Your question is directed to the time from May 7 to mid-July.

The restriction noted above is designed to serve the state's interest in preserving the integrity of the various routes for achieving ballot position. It further serves to reduce inter-party "raiding" and frivolous candidacies designed to reduce party support. The U.S. Supreme Court has upheld the validity of such restrictions in that a "compelling state interest" is served. *Storer v. Brown*, 415 U.S. 724, 98 L.Ed.2d 714, 94 S.Ct 1274 (1974). In that case, a California one year restriction was supported because ". . .the one year disaffiliation provision furthers the State's interest in the stability of its political system." *Id.*, 415 U.S., at 736.

To answer your question a determination of the meaning to be ascribed the term “candidate” as used in the oath must be made. A review of the legislative history is helpful.

Prior to January 1, 1978, the definition of a candidate was found in the campaign financing chapter of the election code. It was thus defined “as used in this chapter” to mean:

“(a) Any person who has filed his qualification papers and subscribed to the candidate oath as required by s. 99.021; or

(b) Any person who has received contributions or made expenditures, appointed a campaign treasurer, designated a campaign depository pursuant to this chapter. .
.” s. 106.011(1), F.S. (1975)

By its placement and very language, this definition was limited in its application only to chapter 106, F.S.

By the adoption of ch. 77-175, Laws of Florida, the legislature transferred this definition to chapter 97, made it applicable to the entire election code (chapters 97-106), and expanded it to include those persons seeking ballot position by use of petitions, s. 97.021(18), F.S.; see s. 1, ch. 77-175, Laws of Florida (effective January 1, 1978).

In construing the application of the party affiliation restriction found in s. 99.021(1)(b), F.S., the term “candidate” must be given the meaning provided by the legislature to apply throughout the election code, including ch. 99. Thus, at such time as any person falls within the definition of chapter 97, he or she is likewise subject to the political party restriction.

Accordingly, in answer to your question, a person who has filed treasurer and depository designations indicating his/her candidacy for the nomination of the political party may not change to seeking the nomination of another party within six months of the general election. In 1978, this means that such a change could not occur on or subsequent to May 7th.

It should be pointed out that this provision does not prevent a person seeking party nomination from switching to an independent candidacy or vice versa. A change to an independent candidate would need to occur before the 92nd day prior to the first primary election, or June 12, 1978, which is the deadline for submitting petitions to the supervisors of elections, s. 99.0955, F.S. An independent candidate may change to a party candidate at any time up to noon of the last day of qualifying in July, provided his/her voter registration conforms to the political party of which nomination is sought, s. 99.021(1)(b)(1.), F.S.

SUMMARY

Any person who has filed designation papers with the qualifying officer pursuant to ch. 106 indicating him/her to be a candidate for the nomination of a political party may not change to being a candidate for nomination of another political party within six months of the November general election. In 1978, this time period began May 7th.