

DE 78-31 - August 3, 1978

**Candidate Qualifications; Circuit Court Judge; Bar Membership; When Satisfied
ss. 100.041, 105.031, 106.23, F.S.**

To: Ronald S. Guralnick, Esq., Guralnick & Gellmari, Suite 1928 One Biscayne Tower, 2 South Biscayne Boulevard, Miami, Florida 33131

Prepared by: Division of Elections

On behalf of Carol King Guralnick, a candidate for circuit court judge, for whom you serve as deputy campaign treasurer, you have requested an advisory opinion of this office in answer to the following question:

"Must a candidate for the Circuit Court have practiced law for a period of five (5) years at the time he qualifies for said office at qualification time in July, 1978?"

Your question is answered in the negative. The time requirement to which you refer must be satisfied as of the time of the person elected assuming office.

Candidates for the office of circuit court judge qualify with the Division of Elections, Department of State, during the regular qualifying period in July. s. 105.031(1), F.S. All such candidates are required to execute an oath or affirmation in writing to be filed with the Division upon qualifying, s. 105.031 (4), F.S. Included therein is the statement that the candidate executing the oath is ". . . qualified under the Constitution and Laws of Florida to hold the judicial office to which he desires to be elected. ..." Id.

Being that your question relates to this oath or affirmation required by the election code, this office may render an opinion pursuant to the authority extended by s. 106.23(2), F.S., to issue opinions ". . . relating to any provisions . . . of Florida election laws with respect to actions... (a) candidate. . . has taken or proposes to take."

Your question is directed to a qualification for the office of circuit court judge which is constitutional in its origin. It is there provided in pertinent part:

"No person is eligible for the office of circuit judge unless he is, and has been for the preceding five years, a member of the bar of Florida." Art. V, s. 8, Fla. Const. (1968, as amended 1972).

While setting out the basic requirement in order to be a circuit judge, the constitution is somewhat unclear as to when this requirement must be met; i.e., at the time of becoming a candidate, when elected, or upon taking office. It is not the proper role of this office to even venture to render any definitive interpretation or construction of a constitutional provision.

However, the proper body for undertaking such a task, namely, the Supreme Court of Florida, has

done so. In a 1966 advisory opinion to then Governor Haydon Burns the court construed the language of an amendment to the judicial article adopted at the 1966 general election adding this bar membership requirement to the constitution. The court there stated:

"The words. . . 'no person shall be eligible for the office of judge. . . unless he is, and for a period of five (5) years has been, a member of the Florida bar' refer to eligibility at the time of assuming office and not at the time of qualification or election to office." In re Advisory Opinion to the Governor. 192 So.2d 757, 759 (Fla. 1966).

Since the language construed by the court then and that found in the constitution today are virtually identical, and there being no subsequent judicial decisions to the contrary, the court's 1966 decision is controlling and followed by the division.

A person elected to the office of circuit court judge assumes that office on the Tuesday following the first Monday in January following the general election, s. 100.041, F.S. Therefore, in accordance with the above cited Supreme Court decision, one must have been a member of the Florida bar for at least five years as of the day of taking office. For those circuit judges elected in 1978, the office will be assumed on January 2, 1979. Accordingly, a person so taking office at that time must have been admitted to the practice of law in Florida on or prior to January 2, 1974.

SUMMARY

The eligibility requirement of five years membership in the Florida bar in order to be a circuit court judge must be satisfied as of the time of assuming office, not when qualifying papers are filed or the person elected.