

DE 80-01 - March 11, 1980

Undue Burden Oath

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Prepared by: Division of Elections

You have requested an opinion from the Division of Elections pursuant to Florida Statute 106.23(2) on the following question:

CAN THE UNDUE BURDEN OATH REQUIRED BY FLORIDA STATUTE 99.095 FOR THE ALTERNATIVE METHOD OF FILING FOR PUBLIC OFFICE BE BASED ON EITHER AN UNDUE BURDEN ON THE CANDIDATE'S PERSONAL ASSETS OR AN UNDUE BURDEN ON OTHER RESOURCES AVAILABLE TO THE CANDIDATE, i.e., HIS CAMPAIGN FUNDS?

Florida Statute 99.095(1) provides in part that,

A PERSON SEEKING TO QUALIFY FOR NOMINATION TO ANY OFFICE WHO IS UNABLE TO PAY THE FILING FEE AND PARTY ASSESSMENT PRESCRIBED BY s. 99.092 WITHOUT IMPOSING AN UNDUE BURDEN ON HIS PERSONAL RESOURCES OR ON RESOURCES OTHERWISE AVAILABLE TO HIM MAY QUALIFY TO HAVE HIS NAME PLACED ON THE BALLOT FOR THE FIRST PRIMARY ELECTION BY MEANS OF THE PETITIONING PROCESS PRESCRIBED IN THIS SECTION.

It is apparent from this language that the Legislature did not intend that payment of the filing fee and party assessment be an undue burden on the candidate's personal assets and other resources available to him before qualifying by petition is permitted. The types of assets are joined by the disjunctive "or", clearly implying that an undue burden on either would make qualifying by petition possible. As campaign funds are obviously "other resources" available to a candidate, the oath can apply to them.

Accordingly, in the absence of a judicial finding to the contrary, it is the opinion of the Division that a candidate may file the oath required to qualify by petition based upon the candidate's determination that either his personal resources or other resources available to him, including campaign funds, would be unduly burdened by payment of the required fees.

The statute imposes no duty or authority for the qualifying officer to inquire into the reasonableness of the candidate's determination as to the existence of such a burden. Therefore, petition forms should be sent to the candidate simply upon receipt of a properly executed written oath.