

DE 84-12 - May 7, 1984

**RESIDENCE REQUIREMENT FOR A DEPUTY SUPERVISOR OF ELECTIONS
s. 98.271, s. 112.021, F.S.**

To: Honorable Lois M. Ritter, Supervisor of Elections, Jefferson County, P. O. Drawer D, Monticello, Florida 32344

Prepared by: Division of Elections

Pursuant to your request, this is a formal elections opinion under s. 106.23(2), F.S., on essentially the following question:

Is there any law or provision that would prevent a person from working as a Deputy Supervisor of Elections in one county but actually being a legal resident and registered voter of another county?

Section 98.271, F.S., provides for the appointment of deputy supervisors of elections by the supervisor of elections. There is no mention in that statute of any qualifications for the position of deputy supervisor. There is no requirement in the Florida Election Code or in the Florida Constitution that a deputy supervisor be a resident or a registered voter of the county in which he has been appointed. In fact, s. 112.021, F.S., provides that "Except as expressly provided by law, there shall be no Florida residence requirement for any person as a condition precedent to employment by any county."

In State ex rel. Attorney General v. George, 23 Fla. 585, 3 So. 81 (1887), the Florida Supreme Court held that when there is no statute or constitutional provision prohibiting it, a person could not be excluded from holding a municipal office because he lacked certain qualifications required by law of voters, i.e., residency and duration of residency. In addition, the court stated that if "residence be not necessary ... it follows that registration is not necessary either, as that cannot be had without the prescribed residence." The court concluded that "there is no absolute connection between voters and officers by which the qualification for the latter should necessarily be determined by those for the former." The Supreme Court in Nichols v. State, 177 So. 2d 467 (Fla. 1965) reiterated its earlier holding in State ex rel. Attorney General v. George, supra.

Even though there is currently no provision that would prevent a person from working as a deputy supervisor in one county while actually being a resident and registered voter of another county, it should be noted that the Florida legislature has the authority to impose such a requirement. As mentioned above, s. 112.021, F.S., provides that "Except as expressly provided by law" (emphasis added) there can be no Florida residency requirement for employment by a county. In addition, the Supreme Court in State ex rel. Attorney General v. George, supra indicated that a requirement that a person be a resident of a county or an elector of that county would be upheld as long as there was a statute or constitutional provision to that effect. The legislature, therefore, could enact a statute imposing a residency and/or registration requirement. See. AGO 076-86

SUMMARY

A deputy supervisor of elections of one county may be a legal resident and registered voter of another county. The Florida Legislature, however, may enact a statute requiring that a deputy supervisor of a county be a resident and/or registered voter of that county.