

**DE 88-02 - January 6, 1988**

**Method of Qualification by Nonpartisan Candidates  
Section 99.092, F.S.**

*To: Honorable Jackie Winchester, Supervisor of Elections, Palm Beach County, 301 North Olive Avenue, Room 105, West Palm Beach, Florida 33401-4795*

*Prepared by: Division of Elections*

This is in response to your letter requesting an advisory opinion from the Division of Elections regarding the following question:

May a nonpartisan school board candidate qualify by the petition method instead of paying a filing fee?

Section 99.092(1), Florida Statutes, provides in pertinent part:

Each person seeking to qualify for nomination or election to any office, except a person seeking to qualify pursuant to s. 99.095 and except a person seeking to qualify as a write-in candidate shall pay a filing fee....

The statutory requirement for a filing fee from nonindigent candidate is a rational means of protecting the state's legitimate election interest in regulating the size of the ballot, avoiding voter confusion and clogging of election machinery, limiting the ballot to serious candidates and defraying expenses. Adams v. Askew, 511 F.2d. 700, 704 (5th Cir. 1975).

However, the state's election interest must be balanced against an individual candidate's equally important interest in the continued availability of political opportunity. Lubin v. Panish, 415 U.S. 709 (1974). It is this balancing of interests that has resulted in the provision of alternative methods of qualifying for candidates in lieu of paying a filing fee. The two alternative methods noted by Section 99.092(1), Florida Statutes, are the petition method and the write-in method.

The petition method is found at Section 99.095 and 105.035, Florida Statutes. This method is limited by the statutory language in its application to persons who are unable to pay the filing fee without imposing an undue burden on their monetary resources and who are partisan candidates, persons seeking to qualify for "nomination by their party" in s. 99.095, Florida Statutes, or "nonpartisan judicial candidates" in s. 105.035, Florida Statutes. Because of the specific statutory language, only these two classes of candidates can utilize the petition method to avoid the requirement of a filing fee. Inasmuch as nonpartisan school board candidates do not belong to either of these statutory classes, they are not entitled to use the petition method.

Yet the statute does not exclude all other candidates who do not meet the alternative petition method

requirements. The write-in method, Section 99.061(3)(a), (b), Florida Statutes, preserves the political opportunity interest of other classes of candidates not specifically named in s. 99.092 or s. 105.635, Florida Statutes. The write-in method is a non-cost procedure which allows persons to be candidates although their names do not appear on the official ballots.

The sufficiency of Florida's write-in procedure as an alternative method has been tested in the courts. In Whetherington v. Adams, 309 F. Supp 318, 322 (N.D. Fla. 1970) the court held that the write-in method of qualifying was a reasonable and rational restriction on a candidate's political opportunity interest. The United States Supreme Court later in Lubin v. Panish, 415 U.S. 702, 710 (1974), supported the decision in Whetherington by suggesting that a write-in procedure without a filing fee, such as Florida's would be an adequate alternative method. As noted in Whetherington, there may be some disadvantages to a write-in candidacy but it does provide a means whereby any citizen regardless of his political support, or his individual wealth, can present himself to the voters for their consideration. 309 F. Supp. at 322 (1970). As the statute is written, nonpartisan school board candidates can avail themselves the use of this alternative method.

### **SUMMARY**

The petition method is not available to nonpartisan school board candidates. The petition method is available as an alternative method of qualifying to only the two specific candidates classes noted in the statutes, i.e., persons seeking to qualify for "nomination by their party" and "nonpartisan judicial candidates." An alternative method of qualifying is provided by statute for nonpartisan school board candidates through the write-in method.