

**DE 90-30 - June 22, 1990**

**Residency of a County Commission Candidate  
Section 99.032, F.S.**

*To: Honorable Wilma Anderson, Supervisor of Elections, Citrus County, Post Office Box 965, Inverness, Florida 32651-0965*

*Prepared by: Division of Elections*

This is in reference to your request for an advisory opinion on the residency requirements for county commission candidates. Under Section 106.23(2), Florida Statutes, the Division of Elections has authority to issue advisory opinions relating to the Florida Election Code, Chapters 97-106, Florida Statutes, to several categories of persons, including supervisors of elections.

You ask the following question:

May a candidate for county commission use an address for his residence address in one county commission district when he only spends a few nights a year at that residence, but actually resides at another address in another county commission district?

Section 99.032, Florida Statutes, provides that a candidate for county commission must, at the time he qualifies for office, be a resident of the district from which he qualifies. However, this statute was found unconstitutional by the Supreme Court of Florida on October 8, 1988 when that Court upheld the Fourth District Court of Appeal's decision in State v. Grassi 532 So.2d 1055 (Fla. 1988). The District Court had declared Section 99.032, Florida Statutes, unconstitutional as it was inconsistent with Article VIII, Section 1(e) of the Florida Constitution which provides that a county commissioner must reside in the district at the time of election.

The 1990 Legislature in Committee Substitute for House Bill 2403, repealed Section 99.032, Florida Statutes. If this legislation becomes law, it will be effective January 1, 1991.

In your letter you state that there is a candidate for county commissioner from Citrus County who would like to use an address in the district in which he is running and possibly spend a few nights each year at that address while actually residing in another district. You asked the legality of this act.

We refer you to Division of Elections' Opinion 80-27 regarding the residence requirements of a county commission candidate. As previously stated, the requirement of Section 99.032, Florida Statutes, is no longer valid in view of the Florida Supreme Court's ruling in the State v. Grassi case, but the discussion in that opinion regarding residency is still valid. In DEO 80-27, the Division stated that the "generally accepted definition of residence is synonymous with domicile, 'that place in which habitation is fixed, without any present intention of moving therefrom.' Berry v. Wilcox, 44 Neb. 82, 62 N.W. 249 (1895), cited in Op. Atty. Gen. 70-07 (August 3, 1970)." In addition, this opinion stated

that "Florida law equates the phrase 'legal resident' with permanent resident, domicile or permanent abode, as distinguished from temporary residence. Bloomfield v. City of St. Petersburg, 82 So.2d 364 (Fla. 1955)."

As discussed in DEO 80-27, the "key element of residency is the intent of the individual. Permanent residence is wherever a person intends to make a permanent domicile, which can be factually supported." A supervisor may use factual support, such as a "driver's licenses, tax receipts, receipt of mail or activities normally indicative of home life." Also see Op. Atty. Gen. 63-31 (March 20, 1963). As stated in the Division's 1980 Opinion, while the foregoing do not prove place of legal residency, such indicators may be used as evidence of that fact.

### **SUMMARY**

A county commissioner must reside in the district at the time of election. Florida law equates a "legal residence" with a permanent residence. The key element of residency is the intent of the individual, which intent can be factually supported.