

DE 92-13 - July 14, 1992

**Change of Party Affiliation Within Six Months of an Election
Sections 97.021(6); 99.021(1)(b)1.& 2.; 99.021(6), F. S.**

*TO: Honorable David C. Leahy, Supervisor of Elections, Dade County, Post Office Box 012241,
Miami, Florida 33101-2241*

Prepared by: Division of Elections

This is in response to your June 8, 1992 letter requesting an opinion on the above-referenced statute. You are the Dade County Supervisor of Elections and, pursuant to Section 106.23(2), Florida Statutes, the division has authority to issue an advisory opinion to you relating to the Florida Election Code, Chapters 97-106, Florida Statutes.

You ask:

Whether a candidate, who has announced his candidacy as an independent, can change his party affiliation from Democrat to Republican within six months of a general election and qualify as a Republican candidate?

For the reasons which follow, the answer to your question is yes.

Candidate is defined in Section 97.021(6), Florida Statutes, to mean any person to whom any one or more of the following apply:

- (a) Any person who seeks to qualify for nomination or election by means of the petitioning process.
- (b) Any person who seeks to qualify for election as a write-in candidate.
- (c) Any person who receives contributions or makes expenditures, or gives his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination or election to, or retention in, public office.
- (d) Any person who appoints a treasurer and designates a primary depository.
- (e) Any person who files qualification papers and subscribes to a candidate's oath as required by law.

Thus, any person who engages in or performs one or more of the above- described acts is a candidate under Florida law. Simply announcing one's candidacy is not enough. However, for the purposes of this opinion we will assume that we are dealing with a candidate pursuant to the foregoing definition.

Section 99.021(1)(b), Florida Statutes, provides, in relevant part, that:

In addition [to subscribing to a candidate's oath], any person seeking to qualify for nomination as a candidate of any political party shall, at the time of subscribing to the oath or affirmation, state in writing:

1. The party of which he is a member.
2. That he is not a registered member of any other political party and has not been a candidate for nomination for any other political party for a period of 6 months preceding the general election for which he seeks to qualify. (Emphasis added.)

Based on the above statutory provisions, if one is seeking to qualify as the nominee of a political party, he must first state the party of which he is a member. Secondly, if one is seeking to qualify for nomination of a political party, he also must state that he is not a member of any other party and has not been a candidate for nomination for any other political party during the six months preceding the general election for which he seeks to qualify.

Section 99.021(1)(b)2., Florida Statutes, therefore, imposes two conditions on a candidate: he must presently be a member of the political party for which he is seeking to qualify for nomination and he cannot have been a candidate for another political party within six months preceding the general election for which he seeks to qualify. Each condition is mandatory and must be met.

Thus, an independent candidate may switch his party affiliation from Democrat to Republican less than six months prior to the general election and qualify for nomination as a Republican candidate, provided he states in writing:

- (1) The party of which he is a member;
- (2) He is not a registered member of any other political party; and
- (3) He has not been a candidate for nomination for any other political party within six months of the general election for which he is seeking to qualify.

The conduct prohibited by Section 99.021(1)(b), Florida Statutes, is not switching from a candidate running independently of party affiliation to a candidate for nomination for a political party. What is prohibited is being a candidate of one political party during the six months preceding the general election and subsequently becoming a candidate for nomination for any other political party during the six months preceding the general election. Section 99.021(1)(b), Florida Statutes, also prohibits a person who is then registered as a member of one political party from qualifying as a candidate for nomination of another political party.

SUMMARY

The statement in writing required by Section 99.021(1)(b), Florida Statutes, only applies to persons who are seeking to qualify for nomination as a candidate of a political party. Section 99.021(1)(b)2., Florida Statutes, imposes two conditions on a candidate: he must presently be a member of the political party for which he is seeking to qualify for nomination and he cannot have been a candidate for another political party within six months preceding the general election for which he seeks to qualify. Each condition is mandatory and must be met.