



## FLORIDA DEPARTMENT *of* STATE

CHARLIE CRIST  
Governor

KURT S. BROWNING  
Secretary of State

May 18, 2009

Mr. Solomon Odenz  
City Clerk, City of North Miami Beach  
City Hall  
17011 N. E. 19<sup>th</sup> Avenue  
North Miami Beach, Florida 33162-3100

RE: DE 09-01  
Qualifying – City Council Candidate;  
Mistaken Group Number Designation  
§ 99.061, Florida Statutes

Dear Mr. Odenz:

This letter responds to a request for an advisory opinion, submitted by the City Attorney on your behalf, regarding whether you should qualify a candidate to run for City Council when the candidate mistakenly placed the incorrect group number on his Oath of Candidate form. Because you are a local official with election-related duties and you have a question about compliance with Florida's election laws, the Division has the authority to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2008).

According to the request for an opinion, the City of North Miami Beach is governed by the qualifying provisions of the state's Election Code. *See* section 100.3605(1), Florida Statutes (2008). The request further relates that, before the qualifying period, a candidate for City Council opened a campaign account and filed the Appointment of Campaign Treasurer and Designation of Campaign Depository for Candidates (Form DS-DE 9) listing the office of "Councilperson – Grp 5." The "Grp 5" designation was also on the Statement of Candidate (DS-DE 84) filed the same date. However, on the first day of qualifying, the candidate submitted his Loyalty Oath and Oath of Candidate, specifying that he was a candidate for "Councilman, Grp 6." The candidate had not filed another Form DS-DE 9 amending the group designation. The City Clerk discovered the discrepancy in the group designations on the qualifying papers after the qualifying period ended. Upon being notified of the conflicting group designation, the candidate immediately submitted a written statement to the filing officer stating that he "made a mistake on the loyalty oath. Please correct to say Group 5."

Based upon the foregoing facts, you essentially ask the following question:

Has the candidate qualified as a candidate for City Council?

The short answer is that the decision whether to qualify the candidate rests with the qualifying officer, upon consultation with counsel, in light of the considerations identified in case law discussed below.

Section 99.061(7), Florida Statutes (2008), requires that before a candidate may be qualified, certain items must be received by the filing office. Two of those items are: (1) the candidate's oath "which must contain the name of the candidate as it is to appear on the ballot; the office sought, including the district or group number if applicable . . . ; and (2) the completed form for the appointment of campaign treasurer and designation of campaign depository . . ." Section 106.021, Florida Statutes (2008), requires that a group number also be placed on the appointment of campaign treasurer and designation of campaign depository form, if applicable.

In the present situation, the candidate filed the proper forms which were complete on their face, but they specified conflicting group numbers for the seat; therefore, the question arises whether the candidate's post-qualification period submission to clarify the inconsistency is effective to make him qualified for City Council, Group 5. The Florida Supreme Court has stated:

Once the deadline for filing has passed no further alterations or changes can be made in a candidate's qualification papers. This court has uniformly held that a candidate's qualification papers must be completed and filed within the time prescribed by statute, and that any errors or omissions cannot be corrected after the filing deadline has passed. See *State ex rel. Taylor v. Gray*, 25 So. 2d 492 (Fla. 1946); *State ex rel. Vinning v. Gray*, 17 So. 2d 288 (Fla. 1944).

*Battaglia v. Adams*, 164 So. 2d. 195, 199 (Fla. 1964). The court has squarely placed the responsibility upon the candidate to exercise due care in submitting his qualifying papers. *State ex rel. Taylor v. Gray*, 25 So. 2d 492, 406 (Fla. 1946). The Division echoed this position in *Division of Elections Opinion 82-22* (August 31, 1982): "Thus, the qualifying officer . . . has no authority to take any action on errors in qualifying papers after the qualifying period has ended. Any corrections or changes subsequent to the closing of the qualifying period must be made by appropriate challenge through a judicial forum. See *State ex rel. Shevin v. Stone*, 279 So. 2d 17 (Fla. 1972); DE 78-30, dated August 3, 1978."

While these authorities seemingly created a bright-line standard for qualification determinations, other decisions have muddied the waters. In *State ex rel. Siegendorf v. Stone*, 266 So. 2d 345 (Fla. 1972), the Secretary of State, as the qualifying officer, accepted qualifying papers submitted by a candidate for county judge, even though the oath form did not completely describe the office for which the candidate was attempting to qualify. The oath form reflected that the candidate was seeking election to office of "Judge (group) 3," but did not indicate that the candidate was qualifying for the office of county judge, nor did it specify the county. The Secretary determined which judicial office the candidate was seeking through a process of elimination based upon the amount paid as the qualifying fee. The candidate's

opponent filed suit to have the judicial candidate removed from the ballot. The court upheld the Secretary's action because the decisions of public administrators made within the area of their responsibilities "will be upheld, if factually accurate and absent some compelling circumstances, clear error or overriding legal basis." *Id.* at 346. The *Siegenderf* court also stated, "[l]iteral and 'total compliance' with statutory language which reaches hypersensitive levels and which strains the quality of justice is not required to fairly and substantially meet the statutory requirement to qualify as a candidate for public office." *Id.* The Division has interpreted this language in the context of the *Siegenderf* facts as giving deference to the qualifying officer's administrative determination of whether the paperwork met the qualifying requirements, but not that the qualifying officer must qualify a candidate who submits deficient qualifying papers.

However, last year, the First District Court of Appeal relied on the *Siegenderf* language to retreat from the literal compliance approach of qualifying paperwork when it overruled the Secretary's determination that a candidate's paperwork was deficient. In *Browning v. Young*, 993 So. 2d 64 (Fla. 1st DCA 2008), the required disclosure of financial interests form was not properly notarized. The court held that because the notarization requirement appeared only on the form itself and the qualifying statute contained no express notarization requirement, the candidate could not be disqualified on the basis of an improper notarization. The court likened the case to *Siegenderf* and stated that the Secretary of State does not have "discretion to reject filing papers that have some technical defect but nevertheless meet all the requirements of the law." *Id.* The court expressed certainty that the supreme court would have ruled differently in *Siegenderf* if the error had "affected the legal sufficiency of the qualifying papers in the case" and that "[s]ubstantial compliance, as the term is used in *Siegenderf*, is the functional equivalent of legal compliance." *Young*, 933 So. 2d at 67. Thus, it appears the *Young* court interpreted *Siegenderf* as requiring a qualifying officer to accept filing papers that contain a "technical defect" so long as the paperwork "substantially complies" with the qualifying requirements and the defect does not "affect[] the legal sufficiency of the qualifying papers." Unless or until this ruling is clarified, qualifying officers and their counsel must attempt to apply these principles to the myriad circumstances presented during each candidate qualifying period.

To be sure, reasonable minds may differ regarding what constitutes "a technical defect," "substantial compliance," or "legal sufficiency." In the present case it may be argued, as in *Siegenderf*, that additional information in the candidate's qualifying file (*e.g.*, the group 5 designations on two other forms) make it apparent that the candidate was seeking to qualify for City Council, group 5, not group 6, and that the paperwork should not be rejected due to this purely "technical defect." On the other hand, it may be argued that the paperwork is not "legally sufficient" because the candidate failed to file an oath which, by statute, "must contain . . . the office sought, including the district or group number if applicable," *see* § 99.061(7)(a)2, Florida Statutes (2008). Given the fact-based nature of this analysis, the wide room for differences of opinion, and the fact that the qualifying officer's decisions are subject to judicial review in the event of a legal challenge, it is not appropriate for the Division to opine on these questions beyond identifying the appropriate factors to be considered. Each

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qualifying officer, in consultation with legal counsel, must conduct an analysis of the considerations identified in *Siegenderf* and *Young* on a case-by case basis, and be prepared to defend the determination if it is challenged in court.

In view of the foregoing, you as the qualifying officer, with advice and assistance from your City Attorney, should determine whether the candidate is qualified after a thorough consideration of the facts, the applicable statutes, and case law.

SUMMARY

When there is an error or omission in qualifying papers, the qualifying officer must determine whether the paperwork nevertheless substantially complies with the qualifying requirements and whether the defect affects the legal sufficiency of the qualifying papers. This determination must be made on a case-by-case basis taking into account all the specific facts presented, with the advice and assistance of counsel. If the paperwork substantially complies with the qualifying requirements and the paperwork meets all the requirements of the law, the qualifying officer should qualify the candidate.

Sincerely,

A handwritten signature in black ink, consisting of a stylized 'D' and 'P' followed by a long horizontal line ending in an arrowhead.

Donald L. Palmer

Director, Division of Elections

cc: Darcee Siegel, Esq., City Attorney, City of North Miami Beach