



FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KURT S. BROWNING
Secretary of State

November 10, 2011

The Honorable Michael Ertel
Supervisor of Elections, Seminole County
1500 East Airport Boulevard
Sanford, Florida 32773-6808

RE: DE 11-05 Qualifying – Role of Qualifying
Officer, § 99.012(7)(c), Florida Statutes

Dear Supervisor Ertel:

This letter responds to your request for an advisory opinion. As the Seminole County Supervisor of Elections, you desire answers to questions about your role as a qualifying officer for candidates. You inquire about your role if you are aware that a candidate is clearly not qualified under applicable law for the office the candidate is seeking. In particular, you ask if you should accept qualifying papers from such a candidate and, if the papers are properly completed looking only at the face of the documents, permit the candidate to be placed on the ballot.

As we stated in Division of Elections Opinion 09-05 (July 15, 2009), the role as a qualifying officer is one that is purely ministerial. Pertinent language from that opinion is reiterated here:

Prior opinions by the Division of Elections,¹ the Attorney General,² and the Florida Supreme Court³ consistently state that a filing officer to whom candidates submit their qualifying papers performs a purely ministerial function and that the filing officer must accept completed qualifying papers submitted under oath or affirmation. The most relevant and succinct pronouncements come from the Florida Supreme Court which has twice addressed the Secretary of State's role as the filing officer for candidates for the Florida House of Representatives (which

¹ *Division of Elections Opinion* 04-05 (May 27, 2004); *Division of Elections Opinion* 00-09 (August 22, 2000); *Division of Elections Opinion* 82-22 (August 31, 1982); *Division of Elections Opinion* 80-27 (August 21, 1980); and *Division of Elections Opinion* 78-305 (August 3, 1978).

² *Op. Att'y Gen.* Fla. 76-130 (1976); *Op. Att'y Gen.* Fla. 74-293 (1974); *Op. Att'y Gen.* Fla. 72-224 (1972); and *Op. Att'y Gen.* Fla. 58-231 (1958).

³ *Shevin v. Stone*, 279 U.S. 17 (Fla. 1972); *Cherry v. Stone*, 265 So. 2d. 56 (Fla. 1972); *Hall v. Hildebrand*, 168 So. 531 (Fla. 1936); and *Davis v. Crawford*, 116 So. 41 (Fla. 1928).

we believe is analogous to the role of other filing officers for candidates under the Election Code). First, the court stated:

[T]he Secretary of State is without authority to pass judgment on questions *dehors*⁴ the filing instruments concerning the qualifications of candidates. That is a question that can only be decided by a court of competent jurisdiction.⁵

Thereafter, the court stated:

Once the candidate states his compliance, under oath, the Secretary's ministerial determination of eligibility for the office is at an end. Any challenge to the correctness of the candidate's statement of compliance is for appropriate judicial determination upon any challenge properly made.⁶

We adhere to these opinions. A filing officer governed by Florida's Election Code may not reject qualifying documents when they appear complete on their face and are properly executed under oath or affirmation.

The Legislature has now buttressed the rulings and opinions of the courts and the Division when it created section 99.061(7)(c), Florida Statutes (2011), which provides:

The filing officer performs a ministerial function in reviewing qualifying papers. In determining whether a candidate is qualified, the filing officer shall review the qualifying papers to determine whether all items . . . have been properly filed and whether each item is complete on its face, including whether items that must be verified have been properly verified pursuant to s. 92.525(1)(a). The filing officer may not determine whether the contents of the qualifying papers are accurate.

One of the requisite candidate qualifying papers is an oath, a portion of which states the candidate is qualified to hold the office the person is seeking.⁷ Falsely swearing to an oath arising out of an election is a felony of the third degree.⁸ The responsibility, therefore, is on the candidate, not the qualifying officer, to ensure that the candidate is qualified for the office the candidate is seeking.⁹ However, this statement is not meant to preclude the qualifying officer

⁴ "Dehors" is a French term used to mean "outside" or "beyond the scope of." *Black's Law Dictionary* (8th ed. 2004).

⁵ *Cherry v. Stone*, 265 So. 2d 56, 58 (Fla. 1972).

⁶ *Shevin v. Stone*, 279 So. 2d 17, 22 (Fla. 1972).

⁷ See §§ 99.021(1), 99.061(7)(a)2., and 105.031(4), Fla. Stat. (2011).

⁸ § 104.011(1), Fla. Stat. (2011).

⁹ See, e.g., *State ex rel. Taylor v. Gray*, 25 So. 2d 492, 496 (Fla. 1946) ("The statutes evidence no indication of an intention . . . to place the duty or responsibility for compliance therewith upon anyone other than the prospective candidate himself.")

from advising a candidate either before or at the time of the candidate's submitting the qualifying papers that the person does not satisfy the requirements to qualify for or to hold the office being sought. In fact, the Division encourages qualifying officers to educate potential candidates on the qualifications for the offices they seek. If the person persists in submitting qualifying papers after being made aware of the qualifications for the office, even when the qualifying officer clearly knows that the candidate does not meet constitutional or statutory requirements for the office, the qualifying officer's role is to accept the papers and not look beyond them to determine if the person is a qualified candidate. If qualifying papers are complete on their face (including whether items that must be verified have been properly verified pursuant to section 92.525(1)(a), Florida Statutes (2011)), the qualifying officer should qualify the candidate and place the candidate's name on the ballot; thereafter, it is up to a court of competent jurisdiction in a lawsuit brought by a proper party to decide if the candidate is qualified.¹⁰

SUMMARY

The qualifying officer's role is purely a ministerial one. The qualifying officer is not to look beyond the face of the qualifying papers to determine if the person is a qualified candidate. If the qualifying papers are complete on their face (including whether items that must be verified have been properly verified pursuant to section 92.525(1)(a), Florida Statutes (2011)), even when the qualifying officer is clearly aware that the candidate does not meet constitutional or statutory requirements for the office, the qualifying officer should qualify the candidate and place the candidate's name on the ballot; thereafter, it is up to a court of competent jurisdiction in a lawsuit brought by a proper party to decide if the candidate is qualified.

Sincerely,

A handwritten signature in black ink, appearing to read "Gisela Salas", with a horizontal line underneath the name.

Dr. Gisela Salas
Director, Division of Elections

¹⁰ *Cherry v. Stone*, 265 So. 2d at 58.