



FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

October 2, 2018

FYI

The Honorable Mac McNeill
Sheriff, Jefferson County
171 Industrial Park
Monticello, FL 32344

Re: DE 18-11 – Candidates; Qualifying; Residency – Candidate residing in different county from where running for sheriff; residency requirement for sheriff -- §§ 99.021(1)(a) and 99.061(7) Florida Statutes

Dear Sheriff McNeill:

This letter responds to your request for an advisory opinion regarding your candidacy for Sheriff in Jefferson County, Florida.¹ As a candidate who proposes to complete the qualifying process by filing the remaining requisite qualifying papers during the qualifying period, the Division of Elections is authorized to issue an opinion to you pursuant to section 106.23(2), Florida Statutes (2018).

FACTS

You presently serve as Sheriff of Jefferson County based upon the Governor appointing you to fill a vacancy that occurred in that elected office. The office is up for election in November 2018 and has a June 2018 qualifying period. You desire to qualify as a candidate in the 2018 election for Sheriff, Jefferson County. You presently reside in Leon County and are a registered

¹ While your campaign manager submitted an email before the 2018 qualifying period requesting an advisory opinion on your behalf, due to the email being misaddressed, the Division did not receive the request until shortly before the 2018 primary election. This opinion is written as if the request had been received before the qualifying period began. Also, where a representative requests the opinion on behalf of a principal, the Division will address the opinion to the principal, not to the representative. See Fla Admin. Code R. 1S-2.010(2)(b).

Division of Elections
R.A. Gray Building, Suite 316 • 500 South Bronough Street • Tallahassee, Florida 32399
850.245.6200 • 850.245.6217 (Fax) DOS.MyFlorida.com/elections



voter in Leon County. While you indicate that you eventually will move your residence to Jefferson County, if elected, you inquire whether you may qualify as a candidate for Sheriff in Jefferson County under section 99.061(7), Florida Statutes (2018), by filing a candidate oath form that says you are a qualified elector in Leon County. Moreover, you desire to know if any residency requirement exists to qualify as a candidate for sheriff and if a residency requirement exists if elected as sheriff.

ANALYSIS

Pertinent to your inquiry, section 99.021(1)(a)1., Florida Statutes (2018), provides that a candidate for any office other than a judicial or federal candidate shall take substantially the following oath:

Before me, an officer authorized to administer oaths, personally appeared (please print name as you wish it to appear on the ballot), to me well known, who, being sworn, says that he or she is a candidate for the office of _____; *that he or she is a qualified elector of _____ County, Florida; that he or she is qualified under the Constitution and the laws of Florida to hold the office to which he or she desires to be nominated or elected; that he or she has qualified for no other public office in the state, the term of which office or any part thereof runs concurrent with that of the office he or she seeks; that he or she has resigned from any office from which he or she is required to resign pursuant to s. 99.012, Florida Statutes; and that he or she will support the Constitution of the United States and the Constitution of the State of Florida. [Emphasis supplied.]*

Nowhere in the oath's language pertaining to being "a qualified elector of _____ County" is there a requirement for a candidate to be an elector of the particular county in which he or she would appear on the ballot as a candidate.² It only requires the candidate subscribe to the oath that he or she is an elector of a named county in Florida. Being a qualified elector necessarily means the candidate must be a legal resident of Florida and a legal resident of the county in which the person is registered to vote.³

Another part of the candidate oath provides that you are "qualified under the Constitution and the laws of Florida to hold the office" that you seek. Therefore, germane to your inquiry about residency, one must determine if Florida's Constitution or laws impose any residency requirement when qualifying as a candidate for or being a county sheriff. Regarding residency, the Division of Elections has "opined that unless otherwise provided constitutionally, legislatively, or judicially, the qualifications one must possess for public office, which would include residency, are effective

² However, as stated in fn. 5, *infra*, a particular office being sought may have a specific qualifying requirement that the candidate be a qualified elector of the county in which the candidate is seeking public office at the time of qualifying.

³ §§ 97.041(1)(a)3. and 4., Fla. Stat. (2018).

at the commencement of the term of office.”⁴ While some offices have residency requirements above and beyond those contained in being a qualified elector of a Florida county,⁵ the additional residence requirement for sheriff was removed from statute in 2010.⁶ No statute exists within Florida’s Election Code that imposes any residency requirement on a sheriff other than that stated in the candidate oath above of being a qualified elector, *i.e.*, being a resident of the state and of the county where the sheriff is registered to vote. Also, the Florida Constitution contains no residency requirement for a county sheriff.⁷ Furthermore, we can find no case law that imposes any residency requirement either for qualifying as a candidate for sheriff or after being elected as a county sheriff. Because no law provides otherwise, you must satisfy the requirement of being a legal resident of Florida and the county in which you are registered to vote (not necessarily the county where you are serving as sheriff) at the time of the commencement of the term of office as sheriff,⁸ and remain a legal resident of whatever county where you are registered to vote throughout your term of office.⁹ The preceding statement does not preclude you from changing your county of legal residence and voter registration from Leon County to Jefferson County after you are elected. The county in which you are registered to vote does not need to be the same county throughout your term of office; you merely must be a legal resident in whatever county you are registered to vote.

Based upon the foregoing, we conclude that in your case where you are both a registered voter and legal resident of Leon County and without any additional residency requirements for sheriff specified in law, you could lawfully complete and submit a candidate oath form by indicating thereon that you are “a qualified elector of Leon County, Florida,” when running for Sheriff in Jefferson County. Furthermore, although you reside in one county and desire to be a candidate for election for sheriff in another county, we opine that as it solely applies to your residency qualifications under the Constitution and the laws of Florida, you may lawfully attest to

⁴ See *Division of Elections Advisory Opinions* 94-04 (Mar. 3, 1994) and 92-10 (June 24, 1992).

⁵ See, *e.g.*, Art. V, §§ 8, 17, and 18; Art VIII, § (1)(e), Fla. Const. (imposing residency requirements for the offices of justice or judge of a court, state attorney, public defender, and county commissioner), and § 1001.361, Fla. Stat. (2018) (imposing residency requirements for candidates for district school board at the time of qualifying; thus, for a school board candidate, the candidate oath form necessarily must reflect that the candidate is a qualified elector of the county in which the school board is located).

⁶ Ch. 2010-113, § 2, at p. 1, Laws of Fla. (2010). Formerly, s. 30.11, Fla. Stat. (2009), read: “The sheriff, or his or deputy, shall reside at the county seat or within 2 miles thereof.”

⁷ The Constitution mentions sheriff in only three places, none of which mentions a residence requirement. See Art. V, §§ 3(c), 4(c), and VIII, § 1(d), Fla. Const.

⁸ The Candidate Oath is prospective in nature -- it becomes effective only when the candidate takes office. *Davis v. Crawford*, 116 So. 41 (Fla. 1928) (The requirement that a candidate shall take oath that he is qualified to hold office refers to qualifications applicable when term of office begins); *State v. Haskell*, 72 So. 651 (1916) (The statutory requirement that a candidate shall make an oath “that he is qualified” had reference to qualifications applicable when elected and the term of office began).

⁹ A failure to maintain the residency required when one is elected creates a vacancy in office. Art. X, § 3, Fla. Const.

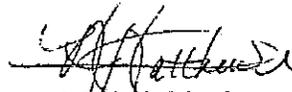
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that portion of the candidate oath pertaining to being qualified for the office to which you desire to be elected.

SUMMARY

A candidate for county sheriff who resides in and is a registered voter in one county may lawfully complete the candidate oath by indicating the county wherein he or she is registered to vote when running for sheriff in another county. No residency requirements exist for a county sheriff other than those required by being a qualified elector, *i.e.*, being a legal resident of Florida and of the county in which the sheriff is registered to vote. A candidate for sheriff must satisfy the requirement of being a resident of the county in which the candidate is registered to vote at the time of the commencement of term of office as sheriff; thereafter, the sheriff must be a legal resident in whatever county the sheriff is registered to vote.

Respectfully,



Maria I. Matthews, Esq.
Director, Division of Elections

cc: Mr. Brian H. Graham