Guidelines for Determining When Residency Qualifications for Elected Office Must be Met

DE Reference Guide 0008 (Updated 07/2014)

These guidelines are for reference only. They are not to be construed as legal advice or representation. For any particular set of facts or circumstances, refer to the applicable state, federal law, and case law, and/or consult a private attorney before drawing any legal conclusions or relying upon this information.

Residency requirements – General Overview

- **In general.** Unless otherwise provided for constitutionally, legislatively or judicially, any residency requirement for an elected office must be met at the time of assuming office. (For example, the Governor must have resided in the state for 7 years by time of election. *See* s. 5, Art. IV, Fla. Const.)
- **Oath.** State law requires that all candidates at the time of qualifying subscribe to an oath (s. 99.021, F.S.) that they are qualified electors of their county. In order to be a qualified elector, one must be a resident of Florida and the county wherein he or she registers to vote. The oath also provides that the candidate is qualified for the office being sought. However, this oath is considered prospective in nature – it becomes effective at the time of assuming office, unless otherwise provided for constitutionally, legislatively or judicially. *See Davis v. Crawford*, 116 So. 41 (Fla. 1928); *State v. Haskell*, 72 So. 651 (Fla. 1916).
- **Continuous residency.** Any residency requirement for an office is a continuous one. Failure to maintain the residency throughout the term results in vacancy in office. *See* generally s. 3, Art. X, Fla. Const. and s. 114.01(1)(g), F.S. In absence of a statute, constitutional provision or municipal ordinance that establishes a residency requirement, failure to maintain residency alone does not trigger a vacancy in office. *See* AGO 75-113; AGO 88-11 (exception for redistricting).

Residency requirements – Specific Offices

- **The following represent situations where the law addresses when residency requirements must be met for candidates and elected officials.**

City Commissioner

- **At the time of assuming office, unless provided otherwise by city charter or ordinance.**
- *See* DE 94-04; DE 92-10; *Nichols v. State,* 177 So.2d 467 (Fla. 1965) & *Marina v. Leahy*, 578 So.2d 382 (Fla. 3rd DCA 1991)(re: reasonable durational residency requirements).

Congressional Members (U.S. Senators and U.S. Representatives)

- Must be an inhabitant of the state when elected. (ss. 2 & 3, Art.1., U.S. Constitution)
- States have no authority to add residency requirements to federal offices.
- Questions about residency relating to a U.S. Senator or U.S. Representative should be directed to the respective Congressional chamber which has *exclusive* jurisdiction over the qualifications including the residency of its membership. *See* s. 5, Art. I., U.S. Constitution.
- Addresses: Clerk of U.S. House of Representatives, U.S. Capitol, Room H154, Washington, DC 20515–6601; phone: (202) 225–7000; Secretary of the Senate, United States Senate, Washington, D.C. 20510; phone: (202) 224-3121.

County Commissioner

- **At the time of election.**
- *See State v. Grassi*, 532 So.2d 1055 (Fla. 1988); s. 1(e), Art. VIII, Fla. Const.; DE 92-10, DE 94-04; & AGO 74-293.

- **Constitutional County Officers (*e.g.*, clerk of court, supervisor of elections, property tax appraiser, sheriff, *etc.*)**
  - **At the time of assuming office.**
  - By analogy, *see Advisory Opinion to Governor*, 192 So.2d 757 (Fla. 1966); DE 90-30, DE 92-10, & DE 94-04 (no minimum residency requirements set out in Florida Constitution but there may be county charters that mandate some durational residency).

- **Governor, Lieutenant Governor, and Cabinet Members**
  - **At the time of election.**
  - Must be resident of State for preceding seven years. *See* s. 5, Art. IV, Fla. Const.

- **Judges**
  - **At the time of assuming office.**
  - By analogy, see *Advisory Opinion to Governor,* 192 So.2d 757 (Fla. 1966); DE 94-04, & DE 78-31; s. 8, Art. V, Fla. Const. (justice/judge must be elector of state and reside in territorial jurisdiction of court).

- **Legislators (state senators and representatives)**
  - **At the time of election.**
  - A legislator assumes office on Election Day (*Ruiz v. Farias*, 43 So. 3d. 124, 127 (Fla. 3DCA 2010)).
  - *See* s. 15, Art. III, Fla. Const. (for qualifications, including residency). A legislator must be resident of district 'from which elected' and be a resident in state for two years prior to election.
  - Further questions about residency should be directed to the respective Florida legislative chamber which has *exclusive* jurisdiction over the qualifications of its members. Senate and House Joint Rule 7.1, which addresses residency, in part, provides: "A member shall be a legal resident and elector of his or her district at the time of election and shall maintain his or her legal residence within that district for the duration of his or her term of office. While a member may have multiple residences, he or she shall have only one legal residence." Each member must file a written statement of residency with the respective chamber.
  - Addresses: Speaker of the House, Florida House of Representatives, 402 South Monroe Street, Tallahassee, FL 32399-1300; phone: (850) 717-5000; President of the Senate, Florida Senate, 404 S. Monroe Street, Tallahassee, FL 32399-1100; phone: (850) 487-5229.

- **School Board Member**
  - **At the time of qualifying.**
  - *See* ss. 1001.34 & 1001.361, F.S..; and DE 82-02 & 94-04. Note: s. 1000.361 was formerly 230.10, F.S.

- **School Superintendent**
  - **At the time of assuming office.**
  - *See* DE 94-04; s. 1001.463, F.S.., failure to maintain residency results in vacancy (implies residency requirement); s. 5, Art. IX, Fla. Const. (4-yr term); s. 1001.46, F.S. (elected); s. 1001.461, F.S. (appointed).

- **Write-in Candidate**
  - **At the time of qualifying.** (s. 99.0615, F.S.)

Residency Questions

- Any questions regarding residency requirements for officials *not* expressly stated in the Florida Election Code should be addressed to the Florida Attorney General's Office.

Sources: Advisory opinions for Division of Elections (http://election.dos.state.fl.us/); Attorney General Opinions (http://myfloridalegal.com); statutes, constitutions, and case law.