

Residency of deputy clerk of court

Number: AGO 92-28

Date: January 04, 1996

Subject:
Residency of deputy clerk of court

Mr. Edward E. Hedstrom
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Putnam County

RE: CLERKS OF COURT—RESIDENCY—COUNTIES—deputy clerk not required to maintain county residency when clerk or other deputy fulfills requirements in s. 28.08, F.S.

QUESTION:

Must a deputy clerk of court be a resident of the county in which he or she serves?

SUMMARY:

If the clerk of court or one of his or her deputies is a resident of the county seat or resides within two miles thereof, as required by s. 28.08, F.S., then there are no further county or state residency requirements imposed upon deputy clerks.

Pursuant to s. 28.06, F.S.:

"The clerk of the circuit court may appoint a deputy or deputies, for whose acts he shall be liable, and the said deputies shall have and exercise each and every power of whatsoever nature and kind as the clerk himself may exercise, excepting the power to appoint a deputy or deputies."

Section 28.08, F.S., provides that "[t]he clerk of the circuit court, *or a deputy*, shall reside at the county seat or within 2 miles thereof." (e.s.)

Use of the term "or" generally represents an alternative and in its ordinary use connotes one or the other, but not both.[1] Given the clear and unambiguous language used, the statute must be given effect with no attempts at statutory construction.[2]

Thus, the statute requires that either the clerk or one of his or her deputies reside at the county seat or within two miles of the county seat. If this statutory residency requirement is met, there is no other residence requirement imposed on deputy clerks. In AGO 90-46, this office was asked to analyze language almost identical to that in s. 28.08, F.S., contained in s. 30.11, F.S.,[3] relative to residency requirements for a deputy sheriff. After discussing the implications of the use of "or" and finding no other constitutional or statutory residency requirements, it was concluded that once the sheriff or one of his or her deputies meets the requirement of residing within the county seat or within a two mile radius thereof, no other residency requirements need

be met by a deputy sheriff.[4]

I have not found any residency requirements for clerks of court or their deputies other than s. 28.08, F.S. Accordingly, deputy clerks who serve under a clerk of court who is a resident as required by s. 28.08, F.S., or who serves with a deputy clerk maintaining such residency, are not required to be citizens of the county.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/t

[1] See *Sparkman v. McClure*, 498 So.2d 892 (Fla. 1986). See generally 67 C.J.S. Or pp. 888-889.

[2] See *Fine v. Moran*, 77 So. 533, 536 (Fla. 1917), and *Osborne v. Simpson*, 114 So. 543, 544 (Fla. 1927).

[3] Section 30.11, F.S., provides: "The sheriff, or his deputy, shall reside at the county seat or within 2 miles thereof."

[4] While the question in AGO 90-46 related to whether the deputy sheriff was required to be a resident of the state, the analysis and conclusion are applicable to a determination of whether a county residence is required.