Municipal candidates, determining residency

Number: INFORMAL

Date: November 10, 2009

Mr. Timothy J. McCausland
Lakeland City Attorney
228 South Massachusetts Avenue
Lakeland, Florida 33801

Dear Mr. McCausland:

On behalf of the Lakeland City Commission, you ask this office's opinion regarding who is responsible for verifying residency when a complaint questions the sworn oath of a candidate. You state that a question has been raised as to whether some of the candidates for the city commission have met the one-year residency requirement imposed by the city charter.

Your inquiry would appear to involve the interpretation of the city charter. As stated in this office's statement concerning Attorney General Opinions, a copy of which is enclosed, "[o]pinions generally are not issued on questions requiring an interpretation only of local codes, ordinances or charters rather than the provisions of state law." To the extent that state law may be implicated, it would appear that such provisions would be contained in the Florida Election Code.[1] Pursuant to section 106.23(2), Florida Statutes, the Division of Elections in the Department of State is authorized to provide advisory opinions relating to any provisions or possible violations of Florida election laws. As discussed in this office's statement, *supra*, questions arising under the Florida Election Code are generally referred to the Division of Elections.

Regarding the issue of residency, the Florida courts have stated that residency generally means an actual presence in a place *and* the intention to remain in that place.[2] As stated by the Florida Supreme Court,[3] the "establishment of one's residence will usually depend on a variety of acts or declarations all of which must be weighed in the particular case as evidence would be weighed upon any other subject." As this office has noted, the question of residency presents a mixed question of law and fact to be settled or determined from the facts of each particular case.[4] As evidence of that intent, public officials will generally consider such things as a driver license, automobile registration, voter registration, declarations of domicile, location of bank account, rent receipts, home mortgage, tax returns, and employment documents. As you note, the courts have recognized that significant weight will be given to an individual's declaration.[5] Moreover, the courts have recognized that if there are doubts or ambiguities regarding eligibility of a candidate, such doubts should generally be resolved in favor of eligibility.[6]

Thank you for contacting the Attorney General's Office.

Sincerely,

Joslyn Wilson

Assistant Attorney General

JW/tsh

Enclosure: Policy Statement

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[1] *See, e.g.,* s. 102.168, Fla. Stat.

[2] *See, e.g., Bloomfield v. City of St. Petersburg Beach*, 82 So. 2d 364 (Fla. 1955) (where good faith intention coupled with an actual removal evidenced by positive overt acts, then the change of residence is accomplished and becomes effective because legal residence consists of the concurrence of both fact and intention); *Perez v. Marti*, 770 So. 2d 284, 289 (Fla. 3d DCA 2000), *review denied,* 773 So. 2d 56 (Fla. 2000) (legal residence is place where person has fixed abode with the present intention of making it their permanent home); *Keveloh v. Carter*, 699 So. 2d 285 (Fla. 5th DCA 1997) (change of residence is accomplished and becomes effective when there is a good-faith intention to establish it, coupled with the actual physical move to a new residence, as evidenced by positive overt acts). *And see Williams v. General Insurance Company*, 468 So. 2d 1033 (Fla. 3d DCA 1985) (person who is a frequent visitor at a certain address and arranges for mail to be left there does not convert him into a resident of that address).

[3] *Bloomfield, supra* at 369; *Perez, supra* (establishment of residence depends on variety of acts or declarations, all of which must be weighed in the particular case).

[4] *See, e.g.,* Op. Att'y Gen. Fla. 73-193 (1973).

[5] *See, e.g., Ogden v. Ogden*, 33 So. 2d 870, 873 (Fla. 1947) ("best proof of one's domicile is where he says it is"), *overruled in part on other grounds, Pawley v. Pawley*, 46 So. 2d 464 (Fla. 1950); *Frank v. Frank*, 75 So. 2d 282, 286 (Fla.1954); *Coons v. Coons*, 765 So. 2d 167, 172 (Fla. 1st DCA 2000).

[6] *See Ervin v. Collins*, 85 So. 2d 852 (Fla. 1956) (where there are doubts or ambiguities as to eligibility, they should be resolved in favor of a free expression of the people; it is the sovereign right of the people to select their own officers and the rule is against imposing disqualifications to run recognizing the sovereign right of the people to select their officers); *Smith v. Crawford*, 645 So. 2d 513, 520 (Fla. 1st DCA 1994) ("the law requires judges to resolve doubts about qualification of a political candidate in favor of the candidate").