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Opinion No. 02-032

Qualifications for State Senator - Residency for Three Years in the State - Article II, Section 10 of the Tennessee Constitution

QUESTIONS

1. Does Article II, Section 10 of the Tennessee Constitution require a candidate for the State Senate to have resided in Tennessee for three years immediately preceding the November 2002 general election?

2. When is the last possible date to challenge, legally or otherwise, the constitutional qualifications of a candidate for the State Senate as set forth in Article II, Section 10 of the Tennessee Constitution?

OPINIONS

1. For the upcoming general election of State Senators on November 5, 2002, Article II, Section 10 of the Tennessee Constitution requires that, before a person may become a State Senator, he/she must have been a resident of this State for three years immediately preceding that election, *i.e.*, since November 5, 1999.

2. The qualifications of a person to hold the office of State Senator may be challenged at two different times: (1) at the time of placement of qualified candidates' names on the ballot by a county election commission prior to the election; and (2) after the election but prior to the taking of the oath in an election contest in the State Senate.

ANALYSIS

1. Article II, Section 10 of the Tennessee Constitution states that "[n]o person shall be a Senator unless he shall be a citizen of the United States, of the age of thirty years, and shall have resided three years in this State, and one year in the county or district, immediately preceding the election." The first question concerns whether the term "immediately preceding the election" applies to both the three year State residency requirement and the one year county/district residency requirement. It is a general rule of construction that insertion of a comma separating the modifying clause in a statute from the clause

immediately preceding it is an indication that the modifying clause was intended to modify the main clause. *Ingram v. Carruthers*, 194 Tenn. 290, 250 S.W.2d 537 (1952). As applied to Article II, Section 10, this principle means that the phrase "immediately preceding the election," which is separated by a comma from the phrase "one year in the county or district," also modifies the phrase "three years in this State." Therefore, a person who seeks to become a State Senator in the upcoming general election on November 5, 2002 must have been a resident of this State three years immediately preceding that election, *i.e.*, since November 5, 1999. *See also* Op. Tenn. Atty. Gen., May 15, 1950 ("the words 'next preceding the election' in Article II, Section 10 of the Constitution refer both to the three-year residence in the State and the one-year residence in the county or district.")

2. The second question concerns when the qualifications for candidates for State Senate can be challenged. There are two periods of time when such challenges can be made: (1) at the time of placement of qualified candidates' names on the ballot by a county election commission prior to the election; and (2) after the election but prior to the taking of the oath in an election contest in the State Senate.

As to placement of qualified candidates' names on the ballot, Tenn. Code Ann. § 2-5-202 provides that "[e]ach county election commission shall have printed separate general and primary election ballots on which shall be only the names of candidates who have qualified and who are to be voted on at the polling place in which the ballots are to be used." It is the duty of each county election commission to place only qualified candidates on the ballot. Therefore, if a county election commission is aware that a candidate does not meet the qualifications for the office he/she seeks, then it is the duty of the commission to refuse to place that individual's name on the ballot. *See* Tenn. Atty. Gen. Op. No. 82-312 (June 23, 1982)(If a candidate "is not a qualified candidate, the County Election Commission has the duty to refuse to place his name on the ballot.") Of course, a candidate whose name a county election commission refuses to place on the ballot may bring suit in chancery court to have his/her name placed on the ballot. *See, e.g., State ex rel. Sonnenburg v. Gaia*, 717 S.W.2d 883 (Tenn. 1986).

After the election, the only method of challenging the qualifications of a person seeking the office of State Senator is an election contest in the State Senate. Tenn. Code Ann. § 2-17-102 provides the following:

> Contests for the office of senator in the general assembly are decided by the senate, and contests for the office of representative in the general assembly are decided by the house of representatives.

Thus, if a losing candidate desires to challenge the qualifications of the prevailing candidate for the office of State Senator or State Representative, such a challenge is properly raised before the State Senate or State House of Representatives.

This statutory provision is in accord with Article II, Section 11 of the Tennessee Constitution, which provides that each house of the General Assembly shall "be judges of the qualifications and election of its members. . . ." This constitutional provision vests in each house of the General Assembly the

exclusive jurisdiction to determine eligibility of its members, and the decision of each house is final as to a member's right to hold the office. *Gates v. Long*, 172 Tenn. 471, 113 S.W.2d 388 (1938).

Once a State Senator takes the oath of office, the only way that a member can be removed from office is by expulsion with the concurrence of two-thirds of the members of the State Senate pursuant to Article II, Section 12 of the Tennessee Constitution. *See* Op. Tenn. Atty. Gen. No. 82-191 (April 5, 1982)("[E]xpulsion of a member of the General Assembly by a 2/3 majority vote of the respective House, pursuant to Article II, § 12, of the Tennessee Constitution, is the exclusive method of involuntary removal of such a member.")

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