

MEMO TO: CYNTHIA S. BONHAM, CITY CLERK  
FROM: CATHERINE D. REISCHMANN, ESQ.  
COPY TO: RANDY KNIGHT, CITY MANAGER  
USHER L. BROWN, CITY ATTORNEY  
RE: ELECTION QUALIFYING  
DATE: JANUARY 9, 2013

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You have asked whether a candidate can submit material required for qualifying shortly after the qualifying period has ended, and still be eligible to run for office as a city commissioner. Under State law and City Code, certain documents must be filed before the end of qualifying in order for a candidate to have his/her name placed on the ballot. Section 42-7(a)(1) of the Winter Park Code provides the deadline for qualifying, stating that a candidate must qualify and file his or her "application to have or her name printed on the ballot", "no later than noon of the 35th day...prior to the date of the primary election." The primary, pursuant to Charter section 3.04, is held on the second Tuesday in February, which this year is February 12th. Therefore, to qualify, one must file the qualifying papers "no later than the 35th day" before February 12th, which means the end of the qualification period is noon on January 8th. That code provision is unambiguous.

Section 42-7(a) provides that in order to qualify, the potential candidate must do four things by noon on January 8th: 1) file an application; 2) have the application endorsed by not less than 25 registered voters; 3) swear to an oath set forth in the code, which substantially tracks the one required by Fla. Stat. 99.021; and 4) file a financial disclosure statement, also required by Fla. Stat. 99.061(5). Section 42-7(b) provides that it is each candidate's duty to comply with the code, but that the Clerk is to notify each candidate of any "defect or deficiency" in the application. The candidate can make "corrections or additions" any time before the end of the qualification term "but not thereafter". In summary, the end of the qualification term is January 8<sup>th</sup> at noon. No additions to the qualifying packets noted by the Clerk are to be made after noon on January 8<sup>th</sup>.

Florida Statutes also provide certain requirements for qualification for office. Fla. Stat. 106.021 requires the appointment of campaign treasurer prior to qualifying for office, and the designation of a campaign depository before any contribution is accepted, or expenditure of funds are made. This means that technically the campaign treasurer must be appointed and the depository account must be opened before the filing fee/election assessment is paid. It appears that the Statement of Candidate required by Fla. Stat. 106.023 is also required before the end of qualifying, according to the City Clerk's website, although the statute only requires filing the form within 10 days after appointment of campaign treasurer.

Florida Statutes 99.021(1) requires that in order to qualify every candidate must pay a filing fee and an election assessment, provided for in Fla. Stat. 99.092 and 99.093. This fee must be paid at the time of filing qualifying papers, per the statute. The fee must be drawn from the campaign account. The statutes also require an oath be sworn at time of qualifying.

Mr. Johnston came into the Clerk's office to file all necessary documents just before noon on January 8<sup>th</sup>. He was informed by the Clerk that noon was the filing deadline. He began filling out the necessary forms. He filed his Appointment of Campaign Treasurer on 11:58. He did not have a check for the election assessment with him, but someone brought it to the Clerk at 12:15. All other required filings were after 12:00 p.m., but Mr. Johnston was in the office filling out forms at noon. He provided the oaths of office at 12:05 and 12:10, and the financial disclosure form at 12:09. He did not provide any petitions at noon, but did provide 25 valid petitions by 1:00. He did not offer a reason why he filed these documents late. It does not appear that there was anything hindering him from doing so.

In an Attorney General Opinion, AGO 058-216, the Attorney General was asked whether the Secretary of State should accept qualification papers for U.S. Congressman which were 10 minutes late. The Attorney General quoted from the statute which is similar to the Winter Park Code, and which requires that the papers be filed prior to noon on the 63<sup>rd</sup> day prior to the primary. The candidate had filed them at 12:10 on the 63<sup>rd</sup> day prior to the primary, and the Attorney General held that anyone who does not file by noon has not complied with the clear terms of the law, and because there are no exceptions, the Secretary of State was not authorized to accept the qualification papers. The Attorney General cited to two opinions from the Florida Supreme Court where the court held the Secretary of State was not required to place candidates' names on the ballots due to late filings.

Candidates are held responsible for knowing and complying with the legal requirements of qualification for office. In *State ex rel. Taylor v. Gary*, 25 So. 2d 492, 496 (Fla. 1946), where a candidate failed to qualify for office because he submitted an insufficient filing fee, the Court stated that the candidate "was charged with the duty, for his own protection, either of determining for himself that the lesser amount would be sufficient, or of at least tendering to the clerk the amount that he, Jones, knew the statute actually provided should be paid." The Court in *Sancho v. Joanos*, 715 So. 2d 382 (Fla. 1<sup>st</sup> DCA 1998), also noted that a candidate does not have a clear legal right to be informed by the Supervisor of Elections that documents are missing from his qualifying papers. The Court upheld the Supervisor's rejection of papers filed late.

There is, however, a case where the courts held that qualifying documents could be taken late. In *Bayne v. Glisson*, 300 So. 2d 79 (Fla. 1<sup>st</sup> DCA 1974), the court agreed that generally a statutory requirement as to time of filing of qualification papers is mandatory, and papers filed late are a nullity. The Court found special circumstances existed in that case, where the facts showed that the candidate's representative was in the Secretary of State's office before the statutory deadline with the completed documents ready to file, but the Secretary's office was filled with so many people that the representative could not get to the correct place in time to file. There was testimony that it was difficult for the representative to find the correct office where the documents had to be filed. The Court cited to cases from out of state where "extraordinary circumstances" were deemed sufficient to justify a technically late filing of qualification papers, and found that similar circumstances existed there.

No facts have been submitted to show extraordinary circumstances in Mr. Johnston's case. It does not appear that Mr. Johnston was in the office with completed papers at noon. In fact, it is clear that Mr. Johnston was still submitting petitions close to 1:00 p.m. Because the complete package was close to an hour late, and there are not any special circumstances, it appears that the Clerk should notify Mr. Johnston that his application package was incomplete at the end of the qualifying period.