

Statement of Economic Interests

Prior to the passage of Act 2019-529, a candidate for municipal office was required to file a statement of economic interests with the State Ethics Commission *simultaneously* with the date the candidate files their qualifying papers or their name shall not appear on the ballot. Act 2019-529 amended Section 36-25-15 of the Code of Alabama to provide that candidates now have up to five days after filing their qualifying papers to file their statement of economic interests. If a candidate fails to file a statement of economic interest, the law provides that their name shall not appear on the ballot.

Even though the statement of economic interest form is **not** filed with the clerk, the clerk should inform the candidate of the filing requirement when the candidate files their statement of candidacy. Once the clerk receives a declaration of candidacy from a candidate, the clerk must, within five (5) days of the receipt, notify the Ethics Commission of the name of the candidate. The Ethics Commission shall, within five (5) business days of receipt of such notification, notify the election official whether the candidate has complied with the statement of economic interest requirement. Section 36-25-15(b), Code of Alabama 1975.

The Ethics Commission may, in its discretion, allow the candidate an additional five (5) days to file because of mistake, omission, error or other good cause. This extension may be granted at any time before the election official is due to forward the statement to the Ethics Commission. Section 36-25-15, Code of Alabama 1975(c). **Clerks should obtain confirmation from the Ethics Commission on whether the candidate has complied with the statement of economic interest requirement before removing the name of any candidate from the ballot.** A person who already has a current statement on file with the Ethics Commission (the annual report) does not need to file a new statement. Section 36-25-15(a), Code of Alabama 1975. However, the clerk should still obtain confirmation from the Ethics Commission that a current statement of Economic Interest is on file for incumbents.

Qualification of Candidates

In filing their statements of candidacy, the candidates certify that they are fully qualified to hold the respective offices for which they are candidates if elected thereto. Section 11-43-1, Code of Alabama 1975 provides that every mayor, councilmember and officer elected by the whole electorate of the city or town shall be a resident and qualified elector of the city or town at the time they qualify to run for office and shall reside within the limits of the city or town during the term of office. Councilmembers elected from wards are required to reside within the limits of the wards from which they were elected during their terms of office.

Additionally, all candidates must have been residents of the municipality for at least 90 days prior to the election and be a qualified elector at the time of filing of the statement of candidacy. Sections 11-46-22(b) and 11-46-25, Code of Alabama 1975.

Similarly, candidates for election from wards must have been a resident of the ward they seek to serve for at least 90 days prior to the election. Section 11-43-63, Code of Alabama 1975.

On numerous occasions, the residency requirement set forth herein has been construed to mean actual physical residence and not merely legal residence for voting purposes. The term “resident” refers to domicile or permanent residence as distinguished from temporary residence. Neither residence in the police jurisdiction nor ownership of property within the corporate limits qualifies a person to vote in a municipal election. AGO to the Hon. Chalmers Bryant, February 9, 1972.

Residence, once acquired, cannot be lost by temporary absence with the intention of remaining. Section 17-3-32, Code of Alabama 1975; AGO 80-00442 (to the Hon. Mixon Jones, July 3, 1980); AGO 1992-00284; and AGO 1992-00383.

Persons residing within territory annexed prior to elections may vote in and become candidates in the municipal election. AGO to the Hon. Charles E. Guntharp, June 4, 1972; AGO to the Hon. Gussie R. Calhoun, June 29, 1976.

A candidate does not establish a legal residence merely by stating an intention to reside in a particular district. A candidate must have a physical presence in the district, as well as the intention to reside in the district. AGO 2000-146.

The receipt and filing of statements of candidacy constitute ministerial acts. **The clerk and the mayor have no authority to**

judge the qualifications of a candidate including residency of the candidate. Their only job is to receive the statements which are properly filled out and see to it that the names of the candidates are properly placed on the ballot. If a question is raised concerning the qualifications of a candidate, a decision thereon should be made by a court. Before leaving the name of a candidate off the ballot after a proper statement of candidacy and the statement of economic interests have been filed, the mayor should have a court order or Attorney General's Opinion to that effect. See, *Harris v. McKenzie*, 703 So.2d 309 (Ala. 1997).

A municipal candidate who fails to pay their qualifying fee before the qualifying deadline passed has not properly qualified, and their name should not appear on the ballot. If a candidate pays the qualification fee by check and the check is dishonored, the candidate has not met a condition for qualifying as a municipal candidate, i.e., the payment of the fee, and therefore, the candidate's name should not be placed on the ballot. AGO 2000-212.

Section 11-46-25(g) of the Code of Alabama does not authorize an individual to have that individual's name printed on the ballot for the desired municipal office as a qualified elector when the individual is only 17 years of age as of the last day to qualify to run for the office of city council; regardless of whether the individual would turn 18 years of age before the day of the election. AGO 2016-044.

Final Date to Qualify - June 24, 2025

The clerk closes out receipt of statements of candidacy at 5:00 p.m. on the fourth Tuesday in June preceding the election. This is the final day on which a candidate may qualify to run in the general municipal election in mayor-council cities and towns. Section 11-46-25(g), Code of Alabama 1975. Since the statute requires 5:00 p.m. as the time of the deadline, the League recommends that the clerk's office, regardless of established office hours, remains open until 5:00 p.m. on the deadline date.

Printing of Ballots

The mayor must cause to be printed on the ballot the names of all qualified electors who filed statements of candidacy by 5:00 p.m. on the fourth Tuesday in June preceding the general municipal election. No names shall be printed on the ballot for a particular office unless more than one statement of candidacy has been filed for that office. **In cases where only one statement of candidacy was filed for a particular office, the mayor must immediately file a written statement with the council certifying the fact that only one person filed a statement of candidacy for that office. At the first regular meeting after receiving such statement, the council shall issue a certificate of election to such person.** Section 11-46-26, Code of Alabama 1975.

Sample forms for this procedure are provided in the Appendix.

Names of candidates for various municipal offices need not be printed in alphabetical order. AGO to the Hon. A. J. Hutcheson, August 15, 1972. However, printing the names alphabetically helps avoid allegations of favoritism.

No Write-In Candidates Allowed

Section 11-46-43(b), Code of Alabama 1975 provides that electors shall not be entitled to vote for any person whose name does not appear on the ballot and that **no elector shall write in the name of any person on the ballot.** The Attorney General has advised that this section is constitutional. AGO to the Hon. J. L. Buzbee, July 27, 1972. See also *Burdick v. Takushi*, 504 U.S. 428 (1992). In the League's opinion, requirements in Sections 17-7-21(b) and 17-2-4 that electronic devices must allow for write in candidates do not permit or require municipalities to allow write-in voting in the municipal election.

Withdrawal of Candidates

Any candidate may withdraw as a candidate by giving written notice to the mayor, at any time, prior to the date of the election. Section 11-46-25(j), Code of Alabama 1975. If a candidate withdraws, the election officials shall, if paper ballots are used in the election, draw a line in ink through the name of such candidate. If electronic tabulators are used in the election, the