

## COUNTY COMMISSIONER

### Qualifications

1. Must have been a resident of the county in which seeking the office for at least 12 months prior to election or appointment.

O.C.G.A. §§ 45-2-1, 21-2-6

#### Annotations:

1. The residency requirement refers to domicile. There must be either the tacit or explicit intention to change one's domicile before one can change his legal residence. If a person leaves the place of his domicile temporarily, or for a particular purpose, and does not take up an actual residence elsewhere with the avowed intention of making a change in his domicile, he will not be considered as having changed his domicile. *Haggard v. Graham*, 142 Ga. App. 498, 236 S.E.2d 92 (1977).
  2. A candidate for office of county commissioner must be a resident for a period of months prior to his or her election but does not have to reside in the commission district from which he or she seeks election for that period. *Op. Atty. Gen.* 86-23.
  3. A county is not authorized to establish more stringent residency requirements for election of county commissioners than the requirements in the O.C.G.A. *Op. Atty. Gen.* 97-27.
2. Must be a qualified voter.

O.C.G.A. § 21-2-6

3. Must be a citizen of the state and must have attained the age of 21 years; provided, however, that upon passage of appropriate local ordinances, citizens of the state who are otherwise qualified and are at least 18 years of age shall be eligible to hold any county office, except offices of a judicial nature.

O.C.G.A. §§ 45-2-1, 21-2-6

### Term of Office and Election

4. Elected by qualified voters of the county.
5. Term of office is four years.

Ga. Const. Art. 9, § 1, ¶ 1

O.C.G.A. §§ 21-2-9 and local legislation enacted for individual counties

6. Elected in the general election held on the Tuesday following the first Monday in November in the year preceding the expiration of the term of office.

O.C.G.A. §§ 21-2-9, 21-2-2 (15)

See Ga. Const. Art. 9, § 1, and local legislation enacted for individual counties.

7. A candidate for county commissioner must pay a qualification fee or file a pauper's affidavit.

O.C.G.A. §§ 21-2-131, 21-2-132, 21-2-153

Annotations:

1. If a candidate is unable to pay required qualifying fee, candidate may execute a pauper's affidavit in lieu of qualifying fee and be afforded the opportunity to run. Op. Atty. Gen. 72-48. See Georgia Socialist Workers Party v. Fortson, 315 F. Supp. 1035 (N.D. Ga 1970).
  2. A candidate for the final half of an unexpired term must pay the full qualification fee just as if he or she were running for a full term. Op. Atty. Gen. U70-77.
  3. For the purpose of computing qualifying fee, only the salary which the law provides for the office directly involved should be included and not the additional compensation paid for the ex-officio position held by the incumbent. Op. Atty. Gen. 70-53.
  4. An elected official cannot rely on payment of an incorrectly advertised qualifying fee to compel the governing authority to compensate the elected official beyond the salary permitted by statute. Rowland v. Tattnall County, 260 Ga. 109, 390 S.E. 2d 217 (1990).
8. Eligibility of write-in candidate:
    - a) No person shall be eligible as a write-in candidate in a special or general primary, a special or general primary runoff, or in a special or general election runoff.
    - b) No person shall be eligible as a write-in candidate in a general or special election if such person was a candidate for nomination or election to the same office in the immediately preceding primary.
    - c) No person elected on a write-in vote shall be eligible to hold office unless notice of his or her intention of candidacy was filed and published no earlier than January 1 and no later than the Tuesday after the first Monday in September prior to the election in the case of a general election or at least 20 or more days prior to a special election. In a general or special election of county officers,
      1. notice must be filed with the superintendent of elections in the county in which the person is to be a candidate and published in the official organ of the same county by the person giving notice of intention to be a write-in candidate or by some other person or group of persons qualified to vote in the subject election; and
      2. a copy of the notice as published and an affidavit that the notice has been published, including the name of the newspaper and the date of publication, must be

filed with the superintendent of elections not later than the fifth day after the deadline for filing and publishing such notice.

Ga. Const. Art. 2, § 2, ¶ 3

O.C.G.A. § 21-2-133

9. No person shall be nominated, nor shall any person be a candidate in a primary, election, or special election for more than one of the following public offices to be filled at any one election or special election: Governor, Lieutenant Governor, Secretary of State, Attorney General, State School Superintendent, Commissioner of Insurance, Commissioner of Agriculture, Commissioner of Labor, United States Senator or Representative in Congress, Public Service Commissioner, Justice of the Supreme Court, Judge of the Court of Appeals, members of the Senate and House of Representatives of the General Assembly, any elected county officer, and any elected municipal officer.

O.C.G.A. § 21-2-136

10. No person shall be nominated or elected who has been adjudged a "subversive person," as defined in the Sedition and Subversive Activities Act of 1953.

O.C.G.A. § 21-2-7

### **Oath of Office**

11. Every public officer must take the oath of office and any oath prescribed by the Constitution of Georgia and must swear that he or she
- a) is not the holder of any unaccounted for public money due this state;
  - b) is not the holder of any office of trust under the government of the United States, any other state, or any foreign state which he or she is by the laws of the State of Georgia prohibited from holding;
  - c) is otherwise qualified to hold said office according to the constitution and laws of Georgia; and
  - d) will support the constitutions of the United States and of this state.

O.C.G.A. § 45-3-1

#### **Note:**

The official acts of an officer are valid regardless of his or her omission to take and file the oath, except in cases where so specially declared. See O.C.G.A. § 45-3-10.

Cross-Reference:

Any public officer who willfully and intentionally violates the terms of his or her oath as prescribed by law shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than five years. O.C.G.A. § 16-10-1.

12. A loyalty oath, which must state that such person will support the Constitution of the United States and the Constitution of Georgia and is not a member of the Communist Party, is also required for all elected officers of this state.

O.C.G.A. §§ 45-3-11, 45-3-12, 45-3-13

Annotations:

1. See Georgia Conference of Am. Ass'n. of University Professors v. Bd. of Regents of University System of Ga., 246 F. Supp. 553 (N.D. Ga. 1965), limiting the coverage of the loyalty oath.
2. The portion of the Georgia loyalty oath which requires one to swear to support the constitutions of Georgia and the United States is valid, and that portion of the oath which requires disavowal of membership in the Communist Party is unconstitutional and should not be administered. Op. Atty.Gen. 85-19.

### Vacancies in and Succession to Office

13. When a vacancy occurs in the office of a county governing authority in any county in which the local act creating that governing authority for the county makes no provision for succession to fill the vacancy and the unexpired term of office exceeds six months in duration, it shall be the duty of the judge of the probate court of the county to call a special election to elect a successor and fill the vacancy in not less than 30 nor more than 60 days. The election shall be held as provided by Chapter 2 of Title 21, the Georgia Election Code, and the cost of the election shall be defrayed by the proper county authorities. If the unexpired term to be filled is less than six months in duration and the local act creating the governing authority makes no provision to fill the vacancy, the judge of the superior court of the county shall have the power to appoint a successor to fill the unexpired term.

O.C.G.A. § 36-5-21 (a)

See O.C.G.A. § 20-2-540, conduct of special elections.

See also local laws pertaining to specific counties.

Note:

See O.C.G.A. § 36-5-21(b) and (c) concerning simultaneous vacancies in all commissioner offices or a vacancy in the office of sole commissioner.

Annotation:

The general law is not applicable if the local act creating the governing authority for the county provides for the manner of succession to fill the vacancy. Op. Atty. Gen. U90-9.

### General Disqualifications

14. The following persons are ineligible to hold any civil office, and the existence of any of the following acts shall be a sufficient reason for vacating any office held by such person, but the acts of such person, while holding a commission, shall be valid as the acts of an officer de facto, namely:
- a) Persons who are not citizens of this state and persons under the age of 21 years, provided, however, that upon passage of appropriate ordinances, citizens of this state who are otherwise qualified and who are 18 years old shall be eligible to hold any county or municipal office, other than a judicial office.
  - b) Persons who are the holders of public funds who have refused or failed to account for and pay over such funds to the proper officer.
  - c) Persons holding any office of profit or trust under the government of the United States other than that of postmaster and officers and enlisted persons of the armed forces. Membership on any federal commission, panel, or other fact-finding or policy-making agency, where the appointment is temporary and the duties do not interfere materially with the person's duties as a public officer, shall not bar any person from holding office in this state or acceding to a state office.
  - d) Persons of unsound mind and persons who, from advanced age or bodily infirmity, are unfit to discharge the duties of the office to which they are chosen or appointed.
  - e) Persons who are not registered and qualified voters entitled to vote.
  - f) Persons who have been convicted of a felony involving moral turpitude, unless that person's civil rights have been restored and at least 10 years have elapsed from the date of the completion of the sentence without a subsequent conviction of another felony involving moral turpitude.
  - g) Persons who have been convicted and sentenced in any court of competent jurisdiction for fraudulent violation of primary or election laws or malfeasance in office unless such person's civil rights have been restored.
  - h) Persons who are constitutionally disqualified for any cause.

GA. Const. Art. 2, § 2, ¶ 3

O.C.G.A. §§ 45-2-1, 21-2-8,

Cross-Reference:

“Public office” means every federal, state, county, and municipal office to which persons can be elected by a vote of the electors under the laws of this state or under the respective municipal charters, except the office of soil and water conservation officer. O.C.G.A. § 21-2-2 (30).

Note:

Each candidate is required to file an affidavit which states that he or she is eligible to hold the office for which he or she is running. See O.C.G.A. §§ 21-2-132 (e), 21-2-153 (e).

Annotations:

1. To prevent persons convicted of certain crimes from holding office, the “conviction” must be a final one. There is no “conviction” within the constitutional provision if jury’s verdict has been set aside or is under review and thus subject to be set aside either by motion for new trial, bill of exceptions, or other appropriate procedures. *Summerour v. Cartrett*, 220 Ga. 31, 136 S.E.2d 724 (1964).
2. While pardon restores a person to full rights of citizenship, including the right to hold office, it does not operate to confer or restore public office previously held. *Morris v. Hartsfield*, 186 Ga. 171, 197 S.E. 251 (1938).
3. A convicted felon who has had his or her civil rights restored is eligible to vote and hold public office. Op. Atty. Gen. U77-43.
4. The conviction of the crime of “having liquor” does not render a person disqualified from holding public office if at the time of commission such crime carried only misdemeanor punishment. Op. Atty. Gen. 67-26.
5. Examples of crimes which always involve moral turpitude were pointed out in *Johnson v. Riley*, 13 Ga. 97, 131(2) (1853); *Holloway v. Holloway*, 126 Ga. 459, 460(1), 55 S.E. 191 (1906) (murder); *Ng Sui Wing v. United States*, 46 F.2d 755 (7th Cir. 1931) (statutory rape); *United States ex rel. Volpe v. Smith*, 289 U.S. 422 (1933) (counterfeiting); *United States ex rel. Karpay v. Uhl*, 70 F.2d 792 (2d Cir. 1934) (perjury); *United States ex rel. Cerami v. Uhl*, 78 F.2d 698 (2d Cir. 1935) (robbery); *In re King*, 165 Ore. 103, 105 P.2d 870 (1940) (false swearing); *In re Sutton*, 213 Minn. 76, 5 N.W.2d 396 (1942) (embezzlement); *Evans v. State*, 70 Ga. App. 500, 501(3), 28 S.E. 2d 671 (1944) (soliciting for prostitutes); *Thompson v. State*, 72 Ga. App. 852, cert. denied, 329 U.S. 714 (1946) (cheating and swindling); *Bancroft v. Board of Governors of Registered Dentists of Oklahoma*, 202 Okla. 108, 210 P.2d 666 (1949) (issuing checks without sufficient funds with intent to defraud); *Librarian v. State Bar*, 38 Cal.2d 328, 239 P.2d 865, 866(2) (1952) (extortion); *United States ex rel. Abbenante v. Butterfield*, 112 F. Supp. 324, 326(2) (E.D. Mich. 1953) (forgery); *State ex rel. Ricco v. Biggs*, 198 Ore. 413, 255 P.2d 1055 (1953) (keeping a bawdy-house); *Huff v. Anderson*, 212 Ga. 32, 90 S.E.2d 329 (1955) (presenting fraudulent claims against the government); *Matter of Brooks*, 263 Ga. 530, 436 S.E.2d 493 (1993) (sexual battery); and *Rehnberger v. State*, 1998 WL 69072 (false imprisonment).

However, moral turpitude was found not to be involved in the following crimes: *Curry v. State*, 17 Ga. App. 312, 86 S.E. 742 (1915) (fighting); *United States ex rel. Andreacchi v. Curran*, 38 F.2d 498 (S.D.N.Y. 1926) (carrying a concealed weapon); *Groves v. State*, 175 Ga. 37, 164 S.E. 822 (1932) (driving a vehicle on a

public road while in an intoxicated state); *Wyatt v. Cerf*, 64 Cal. App. 2d 732, 149 P.2d 309 (1944) (disturbing the peace); *Duke v. Meyers*, 86 Ga. App. 271, 71 S.E.2d 297 (1952) (unlawfully selling intoxicating liquor), 1963-65 Op. Atty. Gen. p. 115, Op. Atty. Gen. 76-69. Other crimes not involving moral turpitude include *Seaboard Coastline R. Co. v. West*, 155 Ga. App. 391, 271 S.E.2d 36 (1980) (child abandonment); *Mingo v. State*, 195 Ga. App. 438, 394 S.E.2d 104 (1990) (writing bad checks); *Hall v. Hall*, 261 Ga. 188, 402 S.E.2d 726 (1991) (DUI misdemeanor conviction); and *Barker v. State*, 211 Ga. App. 279, 254 S.E.2d 850 (1993) (misdemeanor criminal trespass).

6. Any citizen and taxpayer of a community or the state may challenge qualifications of public officials to hold office in that community or the state. Such a person has standing to bring a quo warranto action claiming that a public official is ineligible to hold the office. *Highsmith v. Clark* 245 Ga. 158, 264 S.E.2d 1 (1980).
  7. A potential candidate who completed his sentence for conviction of a felony prior to the enactment of the 1990 amendment to this paragraph did not have any vested rights to seek office. Constitutional amendment prescribing ineligibility to hold office for 10 years after the completion of the sentence applies retroactively. Eligibility to hold public office is determined by the statutory and constitutional requirements in effect on the date of election. *McIntyre v. Miller*, 236 Ga. 578, 436 S.E.2d 2 (1993).
  8. The 1990 constitutional amendment requiring that potential candidates fulfil a 10-year waiting period following completion of a sentence for conviction of a felony involving moral turpitude does not violate the principal of double jeopardy. *McIntyre v. Miller*, 236 Ga. 578, 436 S.E.2d 2 (1993).
  9. The 1990 constitutional amendment does not preempt the enforcement of other qualifications for office that may provide for the temporary suspension from office where no felony conviction exists. *Eaves v. Harris*, 258 Ga. 1, 364 S.E.2d 854 (1988).
  10. An indictment alone would not disqualify a person as a candidate for public office. Op. Atty. Gen. U68-102.
  11. Where a potential candidate has been convicted of a felony involving moral turpitude, pardon or restoration of civil rights is necessary to hold any office or appointment of honor or trust even if the sentence has been completed. Op. Atty. 83-33.
  12. A person seeking to hold any office or appointment of honor and trust in this state must meet the eligibility requirements as set forth in Ga. Const. Art. 2, § 2, ¶ 3, as amended by the 1990 amendment. Op. Atty. Gen. 92-3.
  13. A candidate who registers to vote only after his or her qualification for office and the closing of the qualifications process is not legally qualified to run for office. Op. Atty. Gen. U92-14.
15. Suspension and removal from office upon felony indictment or conviction:
- a) Upon indictment for a felony by a grand jury of this state, which felony relates to the performance or activities of the indicted official, state law provides a means by which such official may be suspended, with pay, pending the final disposition of the case or until the expiration of the official's term of office, whichever occurs first.

- b) Upon initial conviction for any felony in a trial court of this state or the United States, the convicted official shall be immediately and without further action suspended from office without pay.
- c) Upon final conviction of a felony, the office shall be vacated immediately without further action. Said vacancy shall be filled in the manner provided by law for filling vacancies in such office caused by death or resignation.

O.C.G.A. § 45-5-6

Annotation:

Suspension of a county commission according to O.C.G.A. § 45-5-6 and O.C.G.A. § 45-5-6.1 without giving the commissioner the opportunity to challenge the validity of the charges in the indictment did not deprive the commissioner of procedural due process and did not deprive voters of any constitutional rights. *Eaves v. Harris*, 258 Ga. 1; 364 S.E. 2d 854.

- 16. No person shall hold, in any manner whatever, at one time, more than one county office, except by special enactment of the legislature.

O.C.G.A. § 45-2-2