

**OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

**KAREN HANDEL,
SECRETARY OF STATE,
Petitioner,**

v.

**JAMES R. POWELL,
Respondent.**

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DOCKET NO.:
OSAH-SEC-CE-07-0831497-139-Malihi

INITIAL DECISION

Petitioner challenges Respondent’s qualification to be a candidate for Public Service Commission, District 4. More specifically, Petitioner contends that Respondent has not been a legal resident of District 4 for at least twelve months.

A hearing was held this morning, June 24, 2008. Based on the evidence presented, Petitioner’s challenge is DENIED.

**I.
Findings of Fact**

1.

On May 2, 2008, Respondent submitted a “Declaration of Candidacy and Affidavit” in an attempt to qualify as a candidate for Public Service Commission, District 4.

2.

The Secretary of State initiated an investigation to determine whether Respondent was a legal resident of District 4.

3.

Respondent and his spouse purchased a house in District 4 in August, 2006. Respondent spends approximately 60% of his time in the District. In the District, Respondent attends church, pays taxes, registered two cars, registered to vote, voted three times, owns and operates a boat, obtained a driver's license, and receives some of his mail. Respondent intends to have his permanent residence in District 4.

4.

Respondent and his spouse own a house in Cobb County. Cobb County is not in District 4. Respondent's spouse currently resides at the Cobb County property.¹ Respondent expects his spouse to move to District 4 when she retires from her job in Atlanta in December, 2008.

5.

Respondent retained the homestead exemption on his property in Cobb County until May, 15, 2008. On May 16, 2008, he applied for homestead exemption in District 4. In March, 2007, Respondent filed an application to transfer his homestead exemption from Cobb County to his property in District 4. However, his application was denied because it was filed after deadline for 2007.

II. Conclusions of Law

1.

A candidate for State office must meet all constitutional and statutory requirements for holding the office sought by the candidate. O.C.G.A. § 21-2-5(a).

¹ "Neither the domicile nor the residence of one spouse is presumed to be that of the other spouse." Dozier v. Baker, 283 Ga. 543 (2008).

2.

At the time of their election, members of the Georgia Senate “shall have been legal residents of the territory embraced within such district from which elected for at least one year.” Ga. Const. Art. III, § II, Para. III. See also, O.C.G.A. § 28-2-1(b).

3.

In addition to meeting the residency requirement, a candidate for a party nomination must be an elector of the county of residence and eligible to vote in the primary. O.C.G.A. § 21-2-153(e). “Elector” means any person who possesses all the qualifications for voting prescribed by the State. O.C.G.A. §21-2-2.

4.

Residence is the place where a “person’s habitation is fixed, without any present intention of removing therefrom.” O.C.G.A. 21-2-217(1). “Residence” in Georgia for elections purposes is equated with “domicile.” O.C.G.A. § 21-2-2(32). To establish domicile, the party must demonstrate physical presence and intent to remain permanently. Mayo v. Ivan Allen-Marshall Company, 51 Ga. App. 250 (1935). See also Smiley v. Davenport, 139 Ga. App. 753, 757-758 (1976); Avery v. Bower, 170 Ga. 202, 206 (1929).

5.

The Georgia Legislature has established a series of rules for determining residency for registering to vote and qualifying as a candidate. These rules guide this Tribunal's consideration of the issues in this matter. O.C.G.A. § 21-2-217.

3.

Petitioner maintains Respondent is ineligible to run because his 2007 homestead exemption was for the Cobb County property, and “[t]he specific address in the county or municipality in which a person has declared a homestead exemption, if a homestead exemption has been claimed, shall be deemed the person’s residence address.” O.C.G.A. § 21-2-217(14). “Nonetheless, this statute is not solely determinative of the outcome [here]. The court may consider other residency evidence, such as where the person receives mail, and any other evidence that indicates where the person resides in making its conclusion. O.C.G.A. § 21-2-217(15).” Chetta v. Jackson, OSAH-ELE-CE-0626210-68, Judge Ronit Walker (June 5, 2006).

4.

Notwithstanding the homestead exemption on the Cobb County property, Respondent has presented persuasive evidence that he moved into District 4, with an intent to make the District his home, in 2006. Prior to 2008, Respondent attempted to establish homestead in District 4 two times, without success. He finally cancelled the homestead exemption in Cobb County earlier this year.

5.

Residence is the place where a “person’s habitation is fixed, without any present intention of removing therefrom.” O.C.G.A. § 21-2-217(a)(1). “Residence” in Georgia for elections purposes is equated with “domicile.” O.C.G.A. § 21-2-2(32). To establish domicile, the party

must demonstrate physical presence and intent to remain permanently. Mayo v. Ivan Allen-Marshall Company, 51 Ga. App. 250 (1935). See also Smiley v. Davenport, 139 Ga. App. 753, 757-758 (1976); Avery v. Bower, 170 Ga. 202, 206 (1930).

6.

The Georgia Legislature has established a series of rules for determining residency for registering to vote and qualifying as a candidate. These rules guide this Tribunal's consideration of the issues in this matter. O.C.G.A. § 21-2-217. The undersigned concludes that the preponderance of the evidence demonstrates Respondent meets the residency qualifications challenged by Petitioner.

III. Decision

Petitioner's challenge is denied. Respondent is qualified to be a candidate for Public Service Commission, District 4

June 24, 2008.

MICHAEL M. MALIHI
Administrative Law Judge