

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

OFFICE OF SECRETARY OF STATE, STATE ELECTIONS DIVISION, Petitioner,	:	
	:	
	:	
	:	
v.	:	DOCKET NO.:
	:	OSAH-SEC-CE-07-08995-25-Malihi
MELL R. TRAYLOR, Respondent.	:	
	:	

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INITIAL DECISION

**I.
Findings of Fact**

1.

On April 24, 2006, Respondent Mell Traylor submitted a “Declaration of Candidacy and Affidavit” in an attempt to qualify as a candidate for State Senate District 1. (State Exhibit 2).

2.

Petitioner is the Georgia Secretary of State. The Secretary of State is authorized by law to challenge the qualifications of any candidate at any time prior to the election of such candidate. O.C.G.A. § 21-2-5 (b).

3.

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).

4.

On October 2, 2006, State Representative Burke Day asked the Secretary of State to initiate an investigation to determine whether Mr. Traylor was a legal resident of Senate District 1. (State Exhibit 1). Following an investigation, on October 12, 2006, the Secretary of State referred this matter to the Office of State Administrative Hearings to conduct an evidentiary hearing, asserting that Mr. Traylor is not a legal resident of Senate District 1 and is therefore not qualified to be a candidate for Senate District 1.

5.

Mr. Traylor contends that he does reside in Senate District 1, at 139 Nilsson Drive, Savannah, Chatham County, Georgia 31410. (Testimony of Mell Traylor) However, based on the credible evidence presented at the hearing, I conclude that Mr. Traylor is not a legal resident of Senate District 1.

6.

Mr. William Pitts is the owner of the property located at 139 Nilsson Dive. Mr. Pitts is Mr. Traylor’s first cousin. I find Mr. Pitts’ testimony credible that Mr. Traylor does not reside at 139 Nilsson Dive, has not spent one single night at the location in the past two years, does not pay the utility bills for the property, and does not have any personal belongings there. (Testimony of Mr. William Pitts).

7.

Ms. Diane Sabiston has resided, since 1992, at 133 Nilsson Drive. She is Mr. Pitts’ neighbor. Ms. Sabiston has never seen Mr. Traylor or his car at 139 Nilsson Drive. She knows that Mr. Pitts

drives a small car. She rarely observes any other cars at Mr. Pitts' residence. (Testimony of Ms. Diane Sabiston).

8.

Mr. James Ashby has resided, since 1986, at 143 Nilsson Drive. He is Mr. Pitts' neighbor. Mr. Ashby has never seen Mr. Traylor at 139 Nilsson Drive. Mr. Ashby spends most of his time at home. He spends several hours each day working in his garden with his wife. He has a good view of Mr. Pitts' property. Mr. Ashby rarely observes any cars at Mr. Pitts' property other than Mr. Pitts' own small car. (Testimony of Mr. James Ashby).

9.

Mr. Traylor does not recall declaring a homestead exemption in the State of Georgia. During the past two years, he has not paid taxes in the state or filed Georgia income tax returns. Mr. Traylor does not have a source of income in the state, does not own any residential property in Georgia, and does not have a residential lease in the state. He has one bank account in the State of Georgia that he opened 6 months ago. (Testimony of Mr. Mell Traylor).

10.

On December 23, 2004, Mr. Traylor signed a residential rental agreement for a property located in the State of South Carolina. The lease agreement is due to expire on December 31, 2006. (State Exhibit 7). Although Mr. Traylor contends that he uses the South Carolina property only as his office, the lease agreement provides, in part, as follows: "Tenant agrees to occupy the premises solely as a private residence for the "quiet enjoyment" of tenant and his immediate family and for no other purposes." *Id.* Mr. Traylor drove to the hearing from the South Carolina residence where he had spent the night. (Testimony of Mell Traylor).

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).

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.

6.

There is no credible evidence to show that Mr. Traylor resides in Senate District 1. It is undisputed that he does not own or lease any residential property in Senate District 1. He pays no rent in the District, has no utility bills, has no cars registered in the District, does not pay Georgia taxes, has no source of income in Georgia, and does not own any business here. The overwhelming credible evidence shows that the Respondent is not a resident of the District. Three witnesses, including the owner of the property at 139 Nilsson Drive, testified that Mr. Traylor does not reside at the property.

7.

In resolving the issue of Mr. Traylor's qualification as candidate for Senate District 1, the undersigned has assessed the credibility of the witnesses presented by the parties. O.C.G.A. § 24-9-80. In this regard, the undersigned considered the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they testified, the nature of the facts to which they testified, the probability or improbability of their testimony, their interest or want of interest and their personal credibility. The preponderance of the credible evidence is that Mr. Traylor is not a resident of Senate District 1.

III.

Decision

Mr. Mell Traylor is not qualified to be a candidate for Senate District 1.

This 30th day of October 2006.

MICHAEL MALIHI, Judge