

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

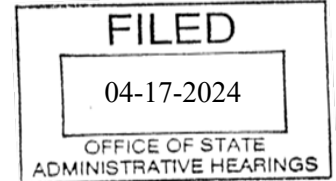
CORIE GREENBLATT,
Petitioner,

v.

CARLTON MAHONE SR.,
Respondent.

**Docket No.: 2434246
2426934-OSAH-SECSTATE-CE-130-
Howells**

Agency Reference No.: 2434246



INITIAL DECISION

Petitioner Corie Greenblatt (“Petitioner”) filed a written complaint challenging the qualifications of Respondent Carlton Mahone Sr. (“Respondent”) to be a candidate for Georgia State Representative of State House District 137. Petitioner contends that Respondent does not actually reside in District 137 and therefore does not meet the constitutional and statutory requirements for the office. The hearing was conducted on April 12, 2024, before the Office of State Administrative Hearings (“OSAH”), a court of administrative law. Based on the evidence presented, the undersigned concludes that Respondent is **not** qualified to be a candidate for State Representative of State House District 137.

Findings of Fact

1.

Respondent moved to 1974 Old Shiloh Road, Shiloh, Georgia some time in 2015. That property is within House District 137. Respondent’s father moved into the residence in 2017, because he could no longer drive and needed help taking care of himself. Respondent cared for his father from 2017 until he passed away on July 7, 2022. Respondent testified that he moved from the Old Shiloh Road address on or about December 1, 2023, because it was unsafe. During

the time Respondent resided at 1974 Old Shiloh Road, he had no ownership interest in the property.¹ (Testimony of Respondent.)

2.

Respondent testified that he moved to a house located at 1411 Flint Hill Hwy 85, Shiloh, Georgia on or about December 1, 2023. He testified that he leases that house from Lillian Parks. He tendered a copy of a lease between himself and Lillian Parks. The lease was purportedly signed on December 1, 2023. The lease states that the home is not furnished, and no appliances are provided. The lease also indicates that the landlord is not providing any utilities and that those utilities are the responsibility of the tenant. (Ex.R-4; Testimony of Respondent.)

3.

The 1411 Flint Hill Hwy 85 property is also within House District 137. Therefore, Respondent asserts that he moved from one location within House District 137 to another location within House District 137. (Ex. R-4; Testimony of Respondent.)

4.

The only other documentary evidence Respondent provided, which shows his address as 1411 Flint Hill Hwy 85 is a State of Georgia Certificate of Change of Name and/or Address form and his updated voter registration. The change of address form was signed by Respondent on March 18, 2024. Respondent's voter registration was updated on April 10, 2024. Respondent tendered no power or water bills reflecting the 1411 Flint Hill Hwy. 85 address. Nor did he tender evidence of any mail that he received at that address. (Exs. R-5, R-6, R-7.)

¹ After Respondent's father passed away, Respondent obtained a partial ownership interest in the property. On November 27, 2023, Respondent and his aunt signed an Exclusive Seller Brokerage Engagement Agreement to sell the Shiloh Road property. The property is currently vacant. It was listed for sale on December 7, 2023 and remains for sale. (Exs. R-1, R-2, P-2, P-3; Testimony of Respondent; Testimony of Ms. Greenblatt.)

5.

Respondent tendered a copy of his driver's license, which was issued on November 16, 2018 and shows his address as 1974 Old Shiloh Road. Other documents tendered by Respondent showing the Old Shiloh Road address include the following: a Georgia Power bill for the period of January 26, 2024 through February 26, 2024, his previous precinct card, a Talbot County Water Works transaction history showing payments for water service, a coverage summary page from Progressive Auto showing that his vehicle is insured and reflecting a change to the policy as of January 4, 2024, and a copy of the bill for his vehicle registration, which was due by April 30, 2024. (Exs. R-8, R-9, R-10, R-11, R-12, R-13.)

6.

Respondent completed his Declaration of Candidacy and Affidavit to run for House District 137 on March 6, 2024. On that document, he swore that his residence address was 1974 Old Shiloh Road, Shiloh, Georgia. As noted above, this is contradicted by Respondent's own testimony the moved from the Old Shiloh Road Address on or about December 1, 2023. (Ex. P-1; Testimony of Respondent.)

7.

Petitioner Corie Greenblatt is an elector eligible to vote in House District 137. After seeing Respondent's Declaration of Candidacy and Affidavit, where he swore that his residence address was 1974 Old Shiloh Road address and learning that the property was vacant and for sale, Petitioner challenged Respondent's qualification to run for House District 137. She submitted her challenge on or before March 17, 2024. She alleges that Respondent is not a resident of House District 137. (Stipulation of the Parties; OSAH Form 1, attachments; Testimony of Ms. Greenblatt.)

8.

The primary election for House District 137 is on May 21, 2024. The general election is on November 5, 2024. (OSAH Form 1, attachments.)²

Conclusions of Law

1.

The Georgia Election Code (the “Code”) mandates that “[e]very candidate for federal and state office who is certified by the state executive committee of a political party or who files a notice of candidacy shall meet the constitutional and statutory qualifications for holding the office being sought.” O.C.G.A. § 21-2-5(a).

2.

Both the Secretary of State and the electors of Georgia are granted the authority to challenge the qualifications of a candidate. The challenge procedures are defined in Code Section 21-2-5(b) and authorize any elector who is eligible to vote for a candidate to challenge the qualifications of the candidate by filing a written complaint with the Secretary of State within two weeks after the deadline for qualifying. O.C.G.A. § 21-2-5(b).

3.

At the time of election, members of the Georgia House of Representatives must have been citizens of this state for at least two years and legal residents of the district in which they are running for at least one year. Ga. Const. Art. III, § II, Para. III(b); see also O.C.G.A. § 28-2-1(b) (requiring a member of the Georgia House of Representatives to have been a resident of his or her district for at least one year preceding the election). The Georgia Supreme Court has interpreted

² See Ga. Const. Art. III, § II, Para. V (members of the Georgia General Assembly are elected biennially on Tuesday after the first Monday in November.)

a similar provision to mean that the candidate must be a resident of the district for at least 12 months prior to the general election. Cox v. Barber, 275 Ga. 415, 416 (2002).

4.

The residency requirement for candidates refers to domicile. O.C.G.A. § 21-2-2 (32); *Handel v. Powell*, 284 Ga. 550 (2008). Domicile denotes “a permanent place of abode.” *Handel*, 284 Ga. at 550. To acquire a domicile, an individual must actually reside there with the intention to remain permanently or for an indefinite amount of time. *Kean v. Marshall*, 294 Ga. App. 459, 461 (Ga. App. 2008) (considering domicile for child support purposes) (emphasis added); *Handel*, 284 Ga. at 550 (citing *Avery v. Bower*, 170 Ga. 202 (1930)).

5.

The burden of proof is entirely upon Respondent to establish affirmatively his eligibility for office:

[T]he statutes place the affirmative obligation on [the challenged candidate] to establish his qualifications for office. [The challenger] is not required to disprove anything regarding [the candidate’s] eligibility to run for office, as the entire burden is placed upon [the candidate] to affirmatively establish his eligibility for office.

Haynes v. Wells, 273 Ga. 106, 108-09 (2000). The standard of proof on all issues is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

6.

Therefore, Respondent must prove that he meets the constitutional and statutory qualifications for State Representative – specifically that he is, and has been, domiciled in District 137 for at least one year, and a citizen of this state for at least two years, prior to the November 5, 2024 general election. Ga. Const. Art. III, § II, Para. III(b); O.C.G.A. § 28-2-1(b); O.C.G.A. § 21-2-2(32).

7.

Georgia Code Section 21-2-217 provides a list of factors to consider when determining the residence (i.e., domicile) of a candidate. Those factors include, among other things, whether after a person moves to another place he intends to make that place his domicile or remain there indefinitely, whether a person leaves his home temporarily with the intention to return, where a person has declared a homestead exemption, where a person receives significant mail, or “any other evidence that indicates where the person resides.” O.C.G.A. § 21-2-217(a)(1)-(15).

8.

Here Respondent presented evidence that in November 2023 he was residing at 1974 Old Shiloh Road, which is in District 137. However, Respondent testified that he moved from that address on or about December 1, 2023 because it was unsafe. That property is currently vacant and listed for sale.

9.

Respondent asserts that he moved to another location (i.e., 1411 Flint Hill Hwy. 85) in House District 137, and therefore there is no gap in his residency within the district. However, Respondent has failed to present sufficient evidence that the 1411 Flint Hill Hwy. 85 address is, in fact, his domicile. To acquire a domicile, one must actually reside at the location with the intention to remain permanently or for an indefinite period of time. *Kean*, 294 Ga. App. at 461; *Handel*, 284 Ga. at 550.

10.

Other than his testimony, the only evidence Respondent presented to support that he has established a domicile at the 1411 Flint Hill Hwy. 85 address is a lease and his post hoc change of address on March 18, 2024 and voter registration on April 10, 2024. Both of these dates are after

Mr. Greenblatt challenged Respondent's qualification for candidacy. Despite the lease stating that Respondent is responsible for the utilities, he presented no evidence of power or water bills for the 1411 Flint Hill Hwy. 85 address. Nor did he present evidence of any mail that he received at that address. His driver's license, vehicle registration, and vehicle insurance continue to show the 1974 Old Shiloh address. Accordingly, he has failed to prove that he meets the residency qualification to run for a member of the Georgia House of Representatives for State House District 137.

Decision

IT IS HEREBY ORDERED THAT Respondent is **not** qualified to be a candidate for State Representative of District 137, and his name should be removed from the ballot.

SO ORDERED, this 17th day of April, 2024.

Stephanie M. Howells

STEPHANIE M. HOWELS
Administrative Law Judge

