

THE ATTORNEY GENERAL STATE OF ALABAMA · MONTGOMERY, ALABAMA 36104



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Honorable James H. Lackey
Deputy City Attorney
City of Mobile
Legal Department
Post Office Box 1827
Mobile, Alabama 36602

Dear Mr. Lackey:

Reference is made to your request of March 28, 1973, for an opinion of this office in regard to the general municipal election which will be held in the City of Mobile within the next few weeks.

Your first question involves the duty of the City Clerk to require a prospective candidate to qualify as such candidate in the manner prescribed by Act No. 1483, Acts of Alabama 1971, page 2539.

In material part, said statute provides that any person desiring to become a candidate for the position of City Commissioner must file a qualifying fee in the amount of two (2%) percent of the annual salary of the office he seeks, file a verified pauper's oath, or file a verified petition containing an endorsement of candidacy by at least 2,000 qualified electors of the City of Mobile.

Under the provisions of a statute enacted in 1965, applicable to the City of Mobile, a filing fee was required to be paid by candidates for municipal office. No other method was provided for becoming a

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candidate. This 1963 statute was found to be unconstitutional by the United States District Court for the Southern District of Alabama in Thomas v. Miss, et al., 317 Fed. Supp. 179. The opinion in said case reads, in part, as follows:

"The door should not be closed on reasonable, non-arbitrary, or non-exorbitant qualifying fees as an aid to 'screening out fictitious' and trumped-up candidates' provided such tests that a 'candidate can get his name on the ballot in some other fashion, either by nominating petition, primary election, or pauper's affidavit,' are met."

I am of the opinion that the provisions of Act No. 1483, mentioned herein, meet the requirements stated in Thomas v. Miss, supra, therefore, you are advised that the Clerk of the City of Mobile must require a person who wishes to become a candidate to qualify in the manner prescribed by Act No. 1483, supra.

Your second question involves the residence requirements for qualifying as a candidate for the office of City Commissioner.

I am of the opinion that any person who is otherwise qualified and who has been a permanent resident of the City of Mobile for a period of thirty (30) days prior to the date of the municipal election may vote in such election. See Dunn v. Blumstein, 31 L. Ed. 2d 274. See also the opinion of this office rendered to Honorable John F. Watkins, Executive Director, Alabama League of Municipalities, dated June 2, 1972.

Your third question involves the age requirement for qualifying to become a candidate for City Commissioner.

We are informed that a City Commissioner is elected each year in the City of Mobile and that he holds office for a period of three years. Thus, the governing body is made up of officers who serve staggered

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terms, one of each term beginning each year. Based upon this information, we assume that the form of government of said City is controlled by the statutes now codified as Title 37, Chapter 4, Article 1, Code of Alabama 1940, Recompiled 1958. City Commissioners are required to be qualified electors of a municipality. No statute specifically places an age limit upon persons who hold the office of City Commissioner.

Section 1 of Amendment 26 to the Constitution of the United States provides that the right to vote shall not be denied or abridged by any state on account of the age of the elector if said elector is eighteen (18) years of age or older.

Based upon this Constitutional Amendment and upon the trend of the recent decisions of the United States Courts and State Courts, you are advised that any qualified elector of the City of Mobile who properly offers himself as a candidate may run for the office of City Commissioner.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General
By-

PAUL T. GISH, JR.
Assistant Attorney General

PTGjr:dh

CC: Honorable Richard L. Smith
City Clerk
City of Mobile
Mobile, Alabama 36602