

**BEFORE THE SECRETARY OF STATE
STATE OF GEORGIA**

KAREN HANDEL , Georgia Secretary of State, Challenger/Petitioner,	:	
	:	
	:	Docket No.:
v.	:	OSAH-SEC-CE-07-831497-139-Malihi
	:	
JAMES R. POWELL ,	:	
Candidate/Respondent.	:	

FINAL DECISION

This matter comes before the Secretary of State pursuant to O.C.G.A. § 21-2-5. Specifically, the Secretary of State challenges the qualifications of Respondent James R. Powell to run for Public Service Commission, District 4 on the basis that Respondent does not meet the residency requirements. An Administrative Law Judge of the Office of State Administrative Hearings held an administrative hearing and entered an initial decision in the above-captioned matter on June 24, 2008.

Based upon all the evidence, the Secretary of State hereby finds Respondent is NOT qualified to be a candidate for Public Service Commission, District 4.

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 received a letter from an elector of Public Service Commission, District 4 and a copy of Respondent's homestead exemption as it appeared on the Cobb County

Tax Commissioner's website. Based upon that information, the Secretary of State initiated an investigation to determine whether Respondent was a legal resident of District 4.

3.

In August, 2006, Respondent and his wife purchased a house in Towns County, which is within District 4. Respondent spends approximately 60% of his time at the Towns County property. In the District, Respondent attends church, pays taxes, registered two cars, registered to vote, voted three (3) times, owns and operates a boat, obtained a driver's license, and receives some of his mail.

4.

Respondent and his spouse also jointly own a home in Cobb County. Cobb County is not in District 4. Respondent's spouse currently resides at the Cobb County property.

5.

At the time Respondent qualified as a candidate for Public Service Commission, District 4, on May 2, 2008, he retained a homestead exemption on the Cobb County property. Respondent had claimed a homestead exemption on the Cobb County property for the years 2005, 2006, and 2007.

6.

On May 15, 2008, Respondent withdrew his homestead exemption application in Cobb County. On May 16, 2008, Respondent applied for homestead exemption with respect to the Towns County property, in District 4. On three separate occasions, Respondent inquired about filing an application to transfer his homestead exemption from Cobb County to his property in District 4, but did not do so, because he missed the deadline in Towns County for filing an application for homestead exemption each time.

7.

Respondent receives mail at the Cobb County property and provided the Cobb County address as his mailing address to the Towns County Tax Assessors Office.

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.

“In order to be elected as a member of the commission from a Public Service Commission District, a person must have resided in that district for at least 12 months prior to election thereto.” O.C.G.A. § 46-2-1(b).

3.

For elections purposes in Georgia, “[r]esidence’ means domicile.” O.C.G.A. § 21-2-2(32); see also Dozier v. Baker, 283 Ga. 543, 543-44 (2008).

4.

The Georgia Legislature has established a set of rules that shall be followed in determining residency to qualify to run for elective office. O.C.G.A. § 21-2-217. “The 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(a)(14). A homestead is the legal residence and domicile of the applicant for all purposes whatever. O.C.G.A. § 48-5-40(3)(K) (“The homestead exempted must be actually occupied as the permanent residence and place of abode by the applicant awarded the

exemption, and the homestead shall be the legal residence and domicile of the applicant for all purposes whatever.”). Despite having spoken with representatives of the Towns County Tax Commissioner’s Office on two previous occasions in 2006 and 2007, Respondent did not file an application to transfer his homestead exemption from Cobb County to his property in District 4 within the 2008 deadline. Only after he had qualified as a candidate for Public Service Commission, District 4 on May 2, 2008 did Respondent cancel his homestead exemption in Cobb County on May 15, 2008 and apply for a homestead exemption in Towns County on May 16, 2008.

5.

Based upon a consideration of all of the evidence, it is concluded that Respondent’s residence is the Cobb County property.


IV.

Decision

Based upon the above Findings of Fact and Conclusions of Law, Respondent does NOT meet the residency requirements and is ineligible to be a candidate for Public Service Commission, District 4.

Pursuant to O.C.G.A. § 21-2-5(c), a prominent notice shall be placed at each affected polling place advising voters of Respondent’s disqualification, and all votes cast for Respondent shall be void and shall not be counted.

SO DECIDED this 10th day of July 2008,


KAREN C. HANDEL
Georgia Secretary of State