

Honorable Samuel C. Newby
President, Jacksonville City Council
117 West Duval Street, Suite 400
Jacksonville, Florida 32202

RE: General Counsel Binding Legal Opinion 22-02; Legal Opinion regarding the Legal Impact of the Duval County Sheriff Moving Out of Duval County During his Term of Office

Dear Council President Newby:

Pursuant to section 7.02, Jacksonville Charter (the "Charter"), you have asked me for a Binding Legal Opinion on the legal effect of the Duval County Sheriff relocating his residence out of Duval County during his term in office.

Legal Question Presented

What is the legal effect of the Jacksonville Sheriff removing his residency from Duval County during his official term in office?

Short Answer

Section 8.03 of the Charter of the City of Jacksonville mandates that the Office of Duval County Sheriff has become vacant as a result of the Jacksonville Sheriff moving his residence outside of Duval County.

Discussion

- I. Is there a legally valid requirement for the Duval County Sheriff to maintain residency during his term?

Florida courts have consistently held that legislative acts creating additional qualification requirements for constitutional officers are unconstitutional where the constitution itself has already established those requirements. *State ex rel. Askew v. Thomas*, 293 So.2d 40 (Fla. 1974); Op. Att'y Gen. Fla. 75-30 (1975). Courts have also held that this applies only where those qualification requirements are expressly stated in the constitution, and it is improper to give meaning to any requirements that must be inferred or implied. *Telli v. Broward County*, 94 So.3d 504 (Fla. 2012). The *Telli* case is particularly relevant on this point. In that case, the Florida Supreme Court was asked to review its previous decision in *Cook v. City of Jacksonville*, 823 So.2d 86 (Fla. 2002), where the Court invalidated the Jacksonville Charter provision establishing term limits on the City's constitutional officers. In *Cook* the Court held that, because the Florida Constitution listed several offices where term limits existed, this implied that local governments were prohibited from establishing term limits for any office not specifically listed, including the Jacksonville Sheriff.

In *Telli*, the Supreme Court reversed its decision in *Cook* and held that Jacksonville's home rule authority authorized it to establish term limit qualifications for its constitutional officers because Florida's Constitution is silent as to specific qualifications for those offices, and Jacksonville's term limits are not

inconsistent with any provision of general law relating to elected county officers. *Telli at 509, 511-12.* While the issue here deals with the establishment of a residency requirement and not term limits, the rationale of the Supreme Court still holds – unless there is an express Florida Constitution provision which establishes qualifications on the office of the sheriff or a provision of general law that establishes a residency requirement inconsistent with Jacksonville’s Charter, the City, pursuant to its home rule authority, has the legal authority to establish a residency requirement for the sheriff.¹

The office of county sheriff is created in Art. VIII, sect. 1(d) of the Florida Constitution. Nothing in Art. VIII, sect. 1(d) establishes qualifications of any kind or mandates any residency requirements on the county sheriff. The failure to include specific residency requirements on Florida sheriffs means that the drafters of the constitution arguably intended for the legislature to have control. *Askew at 43.* Until 2010, the Florida Legislature did that by enacting section 30.11, Florida Statutes which stated, “[t]he sheriff, or his deputy, shall reside at the county seat or within 2 miles thereof.” This section was repealed in 2010 by the Legislature because, “[t]he law was enacted in 1851, but it is no longer used. . . . The bill would repeal s.30.11, F.S., because it is obsolete.” The Legislature did not expressly state that the repeal served to eliminate and prohibit all residency requirements of any kind or at any level in Florida. In fact, it stated that the 1851 residency law was not actually being used and was therefore obsolete.

Nor did its repeal create an implied prohibition against enactment of residency requirements for sheriffs. Such an interpretation, “overly restricts the authority of counties pursuant to their home rule powers under the Florida Constitution” and “Interpreting Florida’s Constitution to find implied restrictions on powers otherwise authorized is unsound in principle. We agree . . . that express restrictions must be found, not implied.” *Telli at 512-13.* As a result, there is currently no general statutory law in Florida that creates a residency requirement for a county sheriff.

I say here that there is no “general statutory law” that creates a residency requirement. It is important to spend a brief time discussing the significance of Jacksonville’s Charter, and the manner in which it was created. The creation of the Consolidated City of Jacksonville was first authorized in 1934 in Art. VIII, sect. 9 of the Florida Constitution. In that Constitutional provision, the Florida Legislature was granted the power to establish, alter or abolish the City by special act “in the place of any or all county . . . officers, constitutional or statutory, legislative, executive, judicial, or administrative, and shall prescribe the jurisdiction, powers, duties, and functions of [the City].” Particular to Jacksonville’s sheriff, the provision mandates that the office not be abolished, but the Legislature may prescribe the time when, and the method by which such office shall be filled. The Florida Constitution required the creation of the City to be approved by a majority of the qualified electors of Duval County. In 1967, the Florida Legislature adopted the Jacksonville Charter in chapter 67-1320, Laws of Florida, subject to and contingent on approval by local referendum. Jacksonville voters approved the Charter by election in August 1967. This is important because the Jacksonville Charter is not a local law created by the Jacksonville City Council. It was adopted by the Florida Legislature and, while its applicability is limited just to Jacksonville, it has the force, effect and authority of state statute.

A vacancy in office for the failure to maintain residency in the county cannot be created unless there is first a legal requirement that the office holder maintains such residency. *Op. Att’y Gen. Fla. 75-30 (1975).*

¹ Florida courts also distinguish between qualification requirements to be a candidate for office and qualification requirements to be able to retain office once elected. This Binding Legal Opinion only focuses on the appropriateness of the Charter’s qualification requirements to be able to retain office once elected.

While there is no longer a general statutory law imposing a residency requirement for sheriff, the Jacksonville Charter does so. Section 8.03 of the Charter provides in part,

Section 8.03. - Vacancy.

If the sheriff should die, resign, or remove his residence from Duval County during his term of office, or be removed from office, the office of sheriff shall become vacant.

While the Charter does not explicitly state that the sheriff shall at all times during the course of his term of office maintain his residence in Duval County (neither does the Charter explicitly state that the sheriff must remain alive and un-resigned during his term), the Charter is clear that doing so is a legal requirement and that the failure to do so results in a vacancy in office. *See Askew* at 13; Op. Att'y Gen. Fla. 75-30 (1975). Therefore, while the Florida Legislature eliminated the residency requirement in section 30.11, Florida Statutes in 2010, it specifically left in place its enactment of the Duval County Sheriff residency requirement in the Charter.

For these reasons, I find that there is a valid residency requirement for sheriff in the City's Charter, which must be maintained during the entirety of his term in office.

II. Is the office of Duval County Sheriff automatically deemed vacant if he removes his residence from Duval County during the term of office?

Under Florida law, what constitutes the establishment of one's residence depends on a judicial determination, based on findings made as to many factors including the intentions of the party and his overt actions, from evidence before the court. Generally, ascertaining the location of one's chosen residence is a fact-intensive determination. However, considering the Sheriff's recent statements to various media outlets, I will assume that when he sold his house and moved out of Duval County he intended to become permanently domiciled or reside elsewhere than in Duval County. This Binding Legal Opinion is predicated upon that assumption.²

It is well settled that, where the language of a statute is clear and unambiguous, courts may not resort to the rules of statutory construction to analyze it. Section 8.03 clearly establishes that a vacancy is created under three scenarios – death, resignation and removal of residence from Duval County during the term of office. This language is clear and unambiguous and therefore not subject to interpretation. All three scenarios, by their very nature and legal definitions, are irrevocable. Additionally, this section does not identify any prerequisites or conditions concerning the establishment of the vacancy under any of the three scenarios. It is clearly automatic and self-executing and does not require a showing of good cause or a finding that such act was intentional or willful. Nor does it require a resignation to become effective.

While section 8.03 clearly establishes the failure to maintain residency automatically results in a vacancy, it is not alone in Florida law in doing so. Art. X, sect. 3, Fla. Const. specifically addresses vacancies in constitutional offices. This section provides that a vacancy “shall occur . . . upon failure to maintain the residence required when elected or appointed . . .” As described by the Florida Supreme Court, this section “completes in every respect the constitutional and statutory consistency of the residency

² A Binding Legal Opinion, by definition, is a legal opinion and not an adjudication of facts as to the merits of an argument. Any factual issues that may be in dispute concerning establishment of residency are best reserved for a judicial determination.

requirements . . . and the continuing requirement of that residency in the area from which such person is chosen; if he leaves, he leaves his office and a vacancy occurs" *Askew* at 43.

Additionally, section 114.01, Florida Statutes states, "Every office shall be deemed vacant in the following cases: . . . (4) By his ceasing to be an inhabitant of the state, district, county, town or city for which he shall have been elected or appointed." Like section 8.03 of the Charter and Art. X, sect. 3 of the Florida Constitution, this language is unambiguous and is clearly self-executing.³

For these reasons, I find that, by virtue of the Sheriff removing his residency from Duval County during his term of office, the provisions of section 8.03, Charter are automatically triggered, self-executing and irrevocable.

Conclusion

For the above-stated reasons, I hereby determine that the office of Jacksonville Sheriff is hereby deemed to be vacant in accordance with section 8.03 of the Jacksonville Charter as of 2:00 P.M. on June 2, 2022. Any actions taken and compensation received by the Sheriff between such time as he removed his residence outside of Duval County and the effective date and time of this vacancy determination are valid actions and compensation of the Jacksonville Sheriff by virtue of his de facto status in that office.

³ There is a strong argument that both Art. X, sect. 3 and section 114.01 would apply to the Jacksonville Sheriff as well. However, since section 8.03, Charter clearly applies, there is no need to opine about the applicability of these provisions.