

Qualifications and Disqualifications for Holding State or County Elective Office in Georgia

**Contains Provisions of Georgia Election Code
As Amended through Regular Legislative Sessions
2000**



Published by
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Secretary of State
Atlanta, Georgia 30334

This is not an official publication of the law. It is merely a guide to the law. It provides, in summary form, only the basic, not an exhaustive, list of requirements for holding state or county office in Georgia. A person seeking the requirements for a particular office should consult the Official Code of Georgia Annotated to read in their entirety the constitutional provisions and Code sections cited in this publication and should examine the index to the Code for possible additional requirements for holding a particular state or county elective or appointed office.

DISTRICT ATTORNEY

Qualifications

1. Must have been a resident citizen of the state for three years just preceding election or appointment.
2. Must permanently reside in the circuit at the time of election or appointment.
3. Must have attained the age of 25 years.
4. Must have been duly admitted and licensed to practice law in the superior courts for at least three years.
5. If disbarred from practice of law, must have been reinstated as provided by law.

O.C.G.A. § 15-18-3

6. Must have been an active-status member of the State Bar of Georgia for three years immediately preceding such person's election.

Ga. Const. Art. 6, § 8, ¶ 1(b)

Annotations:

1. A person who is admitted to practice law but never registered or paid any license fee to the State Bar of Georgia until "right before" he entered the election for the office of district attorney, does not meet the requirements of having practiced for three years immediately preceding his election. No person can legally practice law without first registering and paying the license fee. *Wallace v. Wallace*, 225 Ga. 102, 166 S.E.2d 718 (1969).
2. The specific language requiring admission to practice "in the superior courts" means the superior courts of Georgia and not practice in courts of similar jurisdiction in the other states. *Whitmer v. Thurman*, 241 Ga. 569, 247 S.E.2d 104 (1978).
3. The requirement that the district attorney must have three years' experience of active practice of law before taking office does not deny equal protection of law to one who could not qualify under the requirement. *Nathan v. Smith*, 230 Ga. 612, 198 S.E.2d 509 (1973).
4. A third year law student who serves as a legal assistant to a district attorney pursuant to O.C.G.A. § 15-18-22 does not thereby become "duly admitted and licensed to practice law in the superior courts" for the purpose of determining eligibility to the office of district attorney. *Op. Atty. Gen.* 76-28.
5. A candidate for the office of district attorney must meet the three-year practice of law requirement at the time of his or her election to the office rather than at time of his or her qualification for the office. *Op. Atty. Gen.* 78-20.
6. The word "election" as it appears in these provisions means the day votes are cast, not the day when they are finally tabulated and certified by the secretary of state. *Poythress v. Moses*, 250 Ga. 452, 298 S.E. 2d 480 (1983).

Term of Office and Election

7. Elected circuit-wide for a term of four years at the general election immediately preceding the expiration of the term of office.

Ga. Const. Art. 6, § 8, ¶ 1 (a)

O.C.G.A. § 21-2-9, 21-2-2 (15)

8. A candidate for the office of district attorney must pay a qualification fee or file a pauper's affidavit.

O.C.G.A. §§ 21-2-131, 21-2-132, 21-2-153

Annotations:

1. If candidate is unable to pay required qualifying fee, candidate may execute a pauper's affidavit in lieu of qualifying fee and be afforded the opportunity to run. Op. Atty. Gen. 72-48. See Georgia Socialist Workers Party v. Fortson, 315 F. Supp. 1035 (N.D. Ga. 1970).
 2. A candidate for the final half of an unexpired term must pay the full qualification fee just as if he or she were running for a full term. Op. Atty. Gen. U70-77.
 3. For the purpose of computing qualifying fee, only the salary which the law provides for the office directly involved should be included and not the additional compensation paid for the ex-officio position held by the incumbent. Op. Atty. Gen. 70-53.
 4. An elected official cannot rely on payment of an incorrectly advertised qualifying fee to compel the governing authority to compensate the elected official beyond the salary permitted by statute. Rowland v. Tattnall County, 260 Ga. 109, 390 S.E. 2d 217 (1990).
9. In the event that a candidate pays his or her qualifying fee with a check that is subsequently returned for insufficient funds, the Secretary of State shall automatically find that such candidate has not met the qualifications for holding the office being sought, unless the bank, credit union, or other financial institution returning the check certifies in writing by an officer's or director's oath that the bank, credit union, or financial institution erred in returning the check.

O.C.G.A. § 21-2-5 (d)

10. Eligibility of write-in candidate:
 - a) No person shall be eligible as a write-in candidate in a special or general primary, a special or general primary runoff, or in a special or general election runoff.
 - b) No person shall be eligible as a write-in candidate in a general or special election if such person was a candidate for nomination or election to the same office in the immediately preceding primary.

c) No person elected on a write-in vote shall be eligible to hold office unless notice of his or her intention of candidacy was filed and published no earlier than January 1 and no later than the Tuesday after the first Monday in September prior to the election in the case of a general election or at least 20 or more days prior to a special election. In a state general or special election,

1. notice must be filed with the Secretary of State and published in a paper of general circulation in the state by the person giving notice of intention to be a write-in candidate or by some other person or group of persons qualified to vote in the subject election; and

2. A copy of the notice as published and an affidavit that the notice has been published, including the name of the newspaper and date of publication, must be filed with the Secretary of State not later than the fifth day after the deadline for filing and publishing such notice.

Ga. Const. Art. 2, § 2, ¶ 3

O.C.G.A. § 21-2-133

11. No person shall be nominated, nor shall any person be a candidate in a primary, election, or special election for more than one of the following public offices to be filled at any one election or special election: Governor, Lieutenant Governor, Secretary of State, Attorney General, State School Superintendent, Commissioner of Insurance, Commissioner of Agriculture, Commissioner of Labor, United States Senator or Representative in Congress, Public Service Commissioner, Justice of the Supreme Court, Judge of the Court of Appeals, members of the Senate and House of Representatives of the General Assembly, any elected county officer, and any elected municipal officer.

O.C.G.A. § 21-2-136

12. No person shall be nominated or elected who has been adjudged a “subversive person,” as defined in the Sedition and Subversive Activities Act of 1953.

O.C.G.A. § 21-2-7

Oath of Office

13. A district attorney must take the following oath:

“I do swear that I will faithfully and impartially and without fear, favor, or affection discharge my duties as district attorney and will take only my lawful compensation. So help me God.”

O.C.G.A. § 15-18-2

Note:

The federal constitution requires that the judicial officers of the state be bound by oath or affirmation to support the federal constitution. See U.S. Const., Art. 6, § 3.

14. Every public officer must take the oath of office and any oath prescribed by the Constitution of Georgia and must swear that he or she
- a) is not the holder of any unaccounted for public money due this state;
 - b) is not the holder of any office of trust under the government of the United States, any other state, or any foreign state which he or she is by the laws of the State of Georgia prohibited from holding;
 - c) is otherwise qualified to hold said office according to the constitution and laws of Georgia; and
 - d) will support the constitutions of the United States and of this state.

O.C.G.A. § 45-3-1

Note:

The official acts of any officer are valid regardless of his or her omission to take and file the oath, except in cases where so specially declared. See O.C.G.A. § 45-3-10.

Cross-Reference:

Any public officer who willfully and intentionally violates the terms of his or her oath as prescribed by law shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than five years. O.C.G.A. § 16-10-1.

15. A loyalty oath, which must state that such person will support the Constitution of the United States and the Constitution of Georgia and is not a member of the Communist Party, is also required for all elected officers of this state.

O.C.G.A. §§ 45-3-11, 45-3-12, 45-3-13

Annotations:

1. See Georgia Conference of Am. Ass'n. of University Professors v. Bd. of Regents of University System of Ga., 246 F. Supp. 553 (N.D. Ga. 1965), limiting the coverage of the loyalty oath.
2. The portion of the Georgia loyalty oath which requires one to swear to support the constitutions of Georgia and the United States is valid, and that portion of the oath which requires disavowal of membership in the Communist Party is unconstitutional and should not be administered. Op. Atty. Gen. 85-19.

Vacancies in and Succession to Office

16. All elected or appointed offices are deemed vacant upon the incumbent's death or resignation;

ceasing to be a resident of the state, county, or district from which elected;
failing to obtain commissions or give bond within the time prescribed by law; or
abandoning the office or ceasing to perform its duties.

Upon the occurrence of a vacancy, the officer or body authorized to fill the vacancy or call for an election to fill the vacancy shall do so without the necessity of a judicial determination that a vacancy has occurred.

O.C.G.A. § 45-5-1

17. Vacancy in office is filled by appointment of the Governor or election only for the remainder of the unexpired term.

Ga. Const. Art. 6, § 8, ¶ 1 (a)

O.C.G.A. § 45-5-3

Cross-References:

1. A district attorney cannot be deprived of office when the county in which he or she resides is moved into a different circuit. Such attachment does not create a vacancy in office. O.C.G.A. § 15-18-4.
2. When the district attorney is absent, indisposed, or disqualified for interest or relationship, the presiding judge may appoint a substitute. Such appointment does not create a vacancy in office. O.C.G.A. § 15-18-5.

General Disqualifications

18. The following persons are ineligible to hold any civil office, and the existence of any of the following acts shall be a sufficient reason for vacating any office held by such person, but the acts of such person, while holding a commission, shall be valid as the acts of an officer de facto, namely:
 - a) Persons who are not citizens of this state and persons under the age of 21 years, provided, however, that upon passage of appropriate ordinances, citizens of this state who are otherwise qualified and who are 18 years old shall be eligible to hold any county or municipal office, other than a judicial office.
 - b) Persons who are the holders of public funds who have refused or failed to account for and pay over such funds to the proper officer.
 - c) Persons holding any office of profit or trust under the government of the United States other than that of postmaster and officers and enlisted persons of the armed forces. Membership on any federal commission, panel, or other fact-finding or policy-making agency, where the appointment is temporary and the duties do not interfere

materially with the person's duties as a public officer, shall not bar any person from holding office in this state or acceding to a state office.

- d) Persons of unsound mind and persons who, from advanced age or bodily infirmity, are unfit to discharge the duties of the office to which they are chosen or appointed.
- e) Persons who are not registered and qualified voters entitled to vote.
- f) Persons who have been convicted of a felony involving moral turpitude, unless that person's civil rights have been restored and at least 10 years have elapsed from the date of the completion of the sentence without a subsequent conviction of another felony involving moral turpitude.
- g) Persons who have been convicted and sentenced in any court of competent jurisdiction for fraudulent violation of primary or election laws or malfeasance in office unless such person's civil rights have been restored.
- h) Persons who are constitutionally disqualified for any cause.

GA. Const. Art. 2, § 2, ¶ 3

O.C.G.A. §§ 45-2-1, 21-2-8,

Cross-Reference:

“Public office” means every federal, state, county, and municipal office to which persons can be elected by a vote of the electors under the laws of this state or under the respective municipal charters, except the office of soil and water conservation officer. O.C.G.A. § 21-2-2 (30).

Note:

Each candidate is required to file an affidavit which states that he or she is eligible to hold the office for which he or she is running. See O.C.G.A. §§ 21-2-132 (e), 21-2-153 (e).

Annotations:

1. To prevent persons convicted of certain crimes from holding office, the “conviction” must be a final one. There is no “conviction” within the constitutional provision if jury's verdict has been set aside or is under review and thus subject to be set aside either by motion for new trial, bill of exceptions, or other appropriate procedures. *Summerour v. Cartrett*, 220 Ga. 31, 136 S.E.2d 724 (1964).
2. While pardon restores a person to full rights of citizenship, including the right to hold office, it does not operate to confer or restore public office previously held. *Morris v. Hartsfield*, 186 Ga. 171, 197 S.E. 251 (1938).
3. A convicted felon who has had his or her civil rights restored is eligible to vote and hold public office. Op. Atty. Gen. U77-43.
4. The conviction of the crime of “having liquor” does not render a person disqualified from holding public office if at the time of commission such crime carried only misdemeanor punishment. Op. Atty. Gen. 67-26.

5. Examples of crimes which always involve moral turpitude were pointed out in *Johnson v. Riley*, 13 Ga. 97, 131(2) (1853); *Holloway v. Holloway*, 126 Ga. 459, 460(1), 55 S.E. 191 (1906) (murder); *Ng Sui Wing v. United States*, 46 F.2d 755 (7th Cir. 1931) (statutory rape); *United States ex rel. Volpe v. Smith*, 289 U.S. 422 (1933) (counterfeiting); *United States ex rel. Karpay v. Uhl*, 70 F.2d 792 (2d Cir. 1934) (perjury); *United States ex rel. Cerami v. Uhl*, 78 F.2d 698 (2d Cir. 1935) (robbery); *In re King*, 165 Ore. 103, 105 P.2d 870 (1940) (false swearing); *In re Sutton*, 213 Minn. 76, 5 N.W.2d 396 (1942) (embezzlement); *Evans v. State*, 70 Ga. App. 500, 501(3), 28 S.E. 2d 671 (1944) (soliciting for prostitutes); *Thompson v. State*, 72 Ga. App. 852, cert. denied, 329 U.S. 714 (1946) (cheating and swindling); *Bancroft v. Board of Governors of Registered Dentists of Oklahoma*, 202 Okla. 108, 210 P.2d 666 (1949) (issuing checks without sufficient funds with intent to defraud); *Librarian v. State Bar*, 38 Cal.2d 328, 239 P.2d 865, 866(2) (1952) (extortion); *United States ex rel. Abbenante v. Butterfield*, 112 F. Supp. 324, 326(2) (E.D. Mich. 1953) (forgery); *State ex rel. Ricco v. Biggs*, 198 Ore. 413, 255 P.2d 1055 (1953) (keeping a bawdy-house); *Huff v. Anderson*, 212 Ga. 32, 90 S.E.2d 329 (1955) (presenting fraudulent claims against the government); *Matter of Brooks*, 263 Ga. 530, 436 S.E.2d 493 (1993) (sexual battery); and *Rehnberger v. State*, 1998 WL 69072 (false imprisonment).

However, moral turpitude was found not to be involved in the following crimes: *Curry v. State*, 17 Ga. App. 312, 86 S.E. 742 (1915) (fighting); *United States ex rel. Andreacchi v. Curran*, 38 F.2d 498 (S.D.N.Y. 1926) (carrying a concealed weapon); *Groves v. State*, 175 Ga. 37, 164 S.E. 822 (1932) (driving a vehicle on a public road while in an intoxicated state); *Wyatt v. Cerf*, 64 Cal. App. 2d 732, 149 P.2d 309 (1944) (disturbing the peace); *Duke v. Meyers*, 86 Ga. App. 271, 71 S.E.2d 297 (1952) (unlawfully selling intoxicating liquor). 1963-65 Op. Atty. Gen. p. 115, Op. Atty. Gen. 76-69. Other crimes not involving moral turpitude include *Seaboard Coastline R. Co. v. West*, 155 Ga. App. 391, 271 S.E.2d 36 (1980) (child abandonment); *Mingo v. State*, 195 Ga. App. 438, 394 S.E.2d 104 (1990) (writing bad checks); *Hall v. Hall*, 261 Ga. 188, 402 S.E.2d 726 (1991) (DUI misdemeanor conviction); and *Barker v. State*, 211 Ga. App. 279, 254 S.E.2d 850 (1993) (misdemeanor criminal trespass).

6. Any citizen and taxpayer of a community or the state may challenge qualifications of public officials to hold office in that community or the state. Such a person has standing to bring a quo warranto action claiming that a public official is ineligible to hold the office. *Highsmith v. Clark* 245 Ga. 158, 264 S.E.2d 1 (1980).
7. A potential candidate who completed his sentence for conviction of a felony prior to the enactment of the 1990 amendment to this paragraph did not have any vested rights to seek office. Constitutional amendment prescribing ineligibility to hold office for 10 years after the completion of the sentence applies retroactively. Eligibility to hold public office is determined by the statutory and constitutional requirements in effect on the date of election. *McIntyre v. Miller*, 236 Ga. 578, 436 S.E.2d 2 (1993).
8. The 1990 constitutional amendment requiring that potential candidates fulfil a 10-year waiting period following completion of a sentence for conviction of a felony involving moral turpitude does not violate the principal of double jeopardy. *McIntyre v. Miller*, 236 Ga. 578, 436 S.E.2d 2 (1993).

9. The 1990 constitutional amendment does not preempt the enforcement of other qualifications for office that may provide for the temporary suspension from office where no felony conviction exists. *Eaves v. Harris*, 258 Ga. 1, 364 S.E.2d 854 (1988).
 10. An indictment alone would not disqualify a person as a candidate for public office. Op. Atty. Gen. U68-102.
 11. Where a potential candidate has been convicted of a felony involving moral turpitude, pardon or restoration of civil rights is necessary to hold any office or appointment of honor or trust even if the sentence has been completed. Op. Atty. 83-33.
 12. A person seeking to hold any office or appointment of honor and trust in this state must meet the eligibility requirements as set forth in Ga. Const. Art. 2, § 2, ¶ 3, as amended by the 1990 amendment. Op. Atty. Gen. 92-3.
 13. A candidate who registers to vote only after his or her qualification for office and the closing of the qualifications process is not legally qualified to run for office. Op. Atty. Gen. U92-14.
19. Suspension and removal from office upon felony indictment or conviction:
- a) Upon indictment for a felony by a grand jury of this state, which felony relates to the performance or activities of the indicted official, state law provides a means by which such official may be suspended, with pay, pending the final disposition of the case or until the expiration of the official's term of office, whichever occurs first.
 - b) Upon initial conviction for any felony in a trial court of this state or the United States, the convicted official shall be immediately and without further action suspended from office without pay.
 - c) Upon final conviction of a felony, the office shall be vacated immediately without further action. Said vacancy shall be filled in the manner provided by law for filling vacancies in such office caused by death or resignation.

O.C.G.A. § 45-5-6

Annotation:

When a public official's initial conviction is set aside on appeal and a new trial ordered, that official is entitled to have his or her salary resumed and receive back compensation. Op. Atty. Gen. U91-14.

20. No district attorney receiving an annual salary from the state can engage in the private practice of law.

O.C.G.A. § 15-18-10