

# **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**



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**Cathy Cox**  
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.

## JUDGE OF PROBATE COURT

### Qualifications

1. Must be a citizen of the United States.
2. Must have been a resident of the county for at least two years prior to qualifying for election to the office and must continue residing there.
3. Must be a registered voter.
4. Must have attained the age of 25 years prior to the date of qualifying for election to the office.
5. Must have obtained a high school diploma or its recognized equivalent.
6. Must not have not been convicted of a felony or offense involving moral turpitude.
7. Must file, in addition to the notice of candidacy, an affidavit with the officer before whom he or she qualifies to seek the office of judge of the probate court, prior to or at the time of qualifying, affirming that he or she meets all the required qualifications for such office.

O.C.G.A. § 15-9-2

8. The General Assembly may provide by law for additional qualifications, including, but not limited to, minimum residency requirements.

Ga. Const. Art. 6, § 7, ¶ 2; Art. 9, § 1, ¶ 3

O.C.G.A. §§ 45-2-1, 15-9-2

#### Annotation:

A candidate may live in one county while remaining domiciled in another and still meet the county residency requirement for the office of judge of the probate court. Evidence that compels a finding that a candidate claimed more than the one homestead exemption to which he was entitled does not necessarily compel a finding that the candidate intended to change his county of domicile. *Johnson v. Byrd*, 263 Ga. 173; 429 S.E. 2d 923 (1993).

9. Additional qualifications in counties with a population over 96,000 according to the United States decennial census of 1990 or any future such census include the following:
  - a) Must not engage in the private practice of law.
  - b) Must have attained the age of 30 at the time of election.
  - c) Must have been admitted to practice law for seven years preceding election.

O.C.G.A. § 15-9-4

## **Term of Office and Election**

10. Term of office is four years and until the successor is elected and qualified. The term begins on January 1 and expires on January 1 four years after.

Ga. Const. Art. 6, § 7, ¶ 1; Art. 9, § 1, ¶ 3

O.C.G.A. § 15-9-1

11. Elected in the November election preceding the expiration of the term of office.

O.C.G.A. § 21-2-9

### **Annotation:**

It is settled in this state and in many other jurisdictions of this country that an election is absolutely void when not held in the proper time and place and by persons qualified to hold it. *Davis v. Page*, 217 Ga. 751, 125 S.E.2d 60 (1962).

12. Elected by the qualified voters of the county.

Ga. Const. Art. 9, § 1, ¶ 3

O.C.G.A. § 15-9-1

### **Note:**

The General Assembly may provide by local act for the nomination and election in non-partisan primaries and elections of candidates to fill county judicial offices. O.C.G.A. § 21-2-139.

13. A candidate for probate judge 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 a 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).

14. 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 general or special election of county officers,
  - 1. notice must be filed with the superintendent of elections in the county in which the person is to be a candidate and published in the official organ of the same county 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 the date of publication, must be filed with superintendent of elections 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

- 15. 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

O.C.G.A. § 21-2-8

- 16. 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

## **Bond Requirements**

17. a) Must furnish bond in the sum of \$25,000, which may be increased in any county by local legislation, for the faithful discharge of his or her duties as clerk of the judge of the probate court.

O.C.G.A. § 15-9-7

Note:

Probate judge is, by virtue of his or her office, clerk of his or her own court. See O.C.G.A. § 15-9-36(a).

- b) The bond must be filed by the first day of January after the election.

O.C.G.A. § 45-4-14

- c) The bond must be made payable to the Governor and his or her successor in office.

O.C.G.A. § 45-4-1

18. During the term of the judge of the probate court, if the judge of the superior court determines that the bond is insufficient or the security insolvent, it shall be his or her duty to require other security. On failure of the judge of the probate court to comply with the order, a vacancy shall be declared as if the judge of the probate court had failed to give security in the first instance.

O.C.G.A. § 15-9-9

19. The office of probate judge shall be vacated upon failure to give bond within the time prescribed. No official acts shall be performed until the bond is approved and filed as required.

O.C.G.A. §§ 45-5-1 (6), 45-4-22 (a)

## **Oath of the Office**

20. Before entering on the duties of office, the probate judge must take the following specific oath:

“I do swear that I will well and faithfully discharge the duties of judge of the probate court for the County of \_\_\_\_\_, during my continuance in office, according to law, to the best of my knowledge and ability, without favor or affection to any party, and that I will only receive my legal fees. So help me God.”

O.C.G.A. § 15-9-6

21. 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. §§ 15-9-6, 45-3-1

Note:

The official acts of an office 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.

22. 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**

23. Any judge may be removed, suspended, or otherwise disciplined for
- a) willful misconduct in office;
  - b) willful and persistent failure to perform the duties of office;
  - c) habitual intemperance;

- d) conviction of a crime involving moral turpitude;
- e) or for conduct prejudicial to the administration of justice which brings the judicial office into disrespect.

Any judge may be retired for disability which constitutes a serious and likely permanent interference with the performance of the duties of office.

The Supreme Court shall adopt rules of implementation.

Ga. Const. Art. 6, § 7, ¶ 7

Annotation:

The Supreme Court possesses the authority to regulate the conduct of judges—including conduct during judicial elections. *Judicial Qualifications Commission v. Lowenstein*, 252 Ga. 432, 314 S.E.2d 107 (1984).

24. 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

25. When a vacancy in the office occurs, in descending order, the chief judge (if any and if available) of the state or city court, or the clerk of the superior court (if available), or some person appointed by the chief judge of the superior court shall serve as probate judge until the vacancy is filled.

O.C.G.A. § 15-9-10

Note:

See O.C.G.A. §§ 15-9-11.1 and 15-9-36, concerning assumption of the duties of the office by the chief clerk of the probate judge.

26. Within 10 days after the vacancy occurs, the person serving as probate judge shall order a special election to fill the vacancy for the unexpired term.

O.C.G.A. § 15-9-11

27. The judge of the probate court is ineligible for reelection if he or she fails to account faithfully as executor, administrator, or guardian, after becoming judge, for all trusts he or she held at the time of his or her election.

O.C.G.A. § 15-9-5

### **General Disqualifications**

28. 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.
29. Suspension and removal from office upon felony indictment or conviction:
- a) Upon indictment for a felony by a grand jury of this state or the United States, which felony relates to and adversely affects the administration of justice, the state constitution provides a means by which the indicted judge may be suspended, with pay,

pending the final disposition of the case or the expiration of the judge's term of office, whichever occurs first.

- b) After initial conviction by the trial court, the judge shall not be entitled to receive compensation from his or her office. For the duration of the suspension, the Governor shall appoint a replacement judge.
- c) Upon final conviction with no appeal or review pending, the office shall be declared vacant 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.

Ga. Const. Art. 6, § 7, ¶ 7 (b) (1)

O.C.G.A. § 45-5-2

- 30. No person shall hold, in any manner whatever, at any one time, more than one county office, except by special enactment of the legislature.

O.C.G.A. § 45-2-2

Annotation:

A replacement probate judge appointed in good faith pursuant to O.C.G.A. § 15-9-13 (a) may be designated pursuant to O.C.G.A. § 15-1-9.1 to assist temporarily a state court for a specified duration, assuming the individual meets the statutory qualifications of O.C.G.A. § 15-7-2 (a) (1).