

# **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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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 SUPERIOR COURT

### Qualifications

1. Must have attained the age of 30 years at the time of election.

Ga. Const. Art. 6, § 7, ¶ 2 (e)

O.C.G.A. § 15-6-4

2. Must have been a citizen of the state for three years when elected.

Ga. Const. Art. 6, § 7, ¶ 2 (e)

O.C.G.A. § 15-6-4

3. Must, when elected, have practiced law for seven years and must have been duly reinstated to the practice of law in the event of disbarment therefrom.

Ga. Const. Art. 6, § 7, ¶ 2 (a) and (e)

O.C.G.A. § 15-6-4

#### Annotation:

A person running for the office of judge of superior court must meet the seven-year practice of law requirement by the date of his or her election to office. Op. Atty. Gen. 81-64.

4. Must reside in the geographical area in which selected to serve.

Ga. Const. Art. 6, § 7, ¶ 2 (d)

5. Must be elected by the electors of the judicial circuit in which the judge is to serve.

O.C.G.A. § 15-6-4.1

### Term of Office and Election

6. Elected circuit-wide on a nonpartisan basis for a term of four years. The term begins on January 1 after the election.

Ga. Const. Art. 6, § 7, ¶ 1

O.C.G.A. §§ 21-2-138, 15-6-4.1

#### Annotations:

1. The omission of the phrase “until his successor is qualified” in the 1983 Constitution does not prevent a legally qualified incumbent from remaining in office after his or her four-year term of office ends. *Garcia v. Miller*, 261 Ga. 531; 408 S.E. 2d 97 (1991).

2. There is no constitutional or statutory bar to continuing to serve as judge of the state court until the effective date of resignation from that office, notwithstanding having taken the oath of office of judge of the superior court a few days before that term of office was to begin. *Carey Canada, Inc. v. Hinely*, 181 Ga. App. 364; 352 S.E. 2d. 398 (1986).
  3. An appointee to fill a vacancy occurring in a superior or state court judgeship will serve until January 1 following the next general election which is more than six months after the date of the person's appointment, at which time the appointee will be required to run for a new four-year term of office regardless of the time remaining in the original term of office. Op. Atty. Gen. 86-31.
  4. The designation of a magistrate to preside over a trial cloaked the magistrate with statutory and constitutional authority to exercise judicial power of the superior court, but did not make him a superior court judge. Consequently, a magistrate's designation to preside in superior court did not violate the constitutional requirements that superior court judges be elected. *Massey v. State*, 265 Ga. 632; 458 S.E. 2d 818 (1995).
7. Elected in the general election held on the Tuesday following the first Monday in November in each even-numbered year 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).

8. A candidate for judge of superior court 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 purposes 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, Commis-

sioner 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. Before entering on the duties of their office, superior court judges are required to take the following oath:

“I swear that I will administer justice without respect to person and do equal rights to the poor and the rich and that I will faithfully and impartially discharge and perform all the duties incumbent on me as judge of the superior courts of this state, according to the best of my ability and understanding, and agreeably to the laws and Constitution of this state and the Constitution of the United States. So help me God.”

O.C.G.A. § 15-6-6

#### **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. §§ 15-6-6, 45-3-1

Note:

The official acts of an 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. 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).

17. In case of vacancy by resignation, death, or otherwise, the vacancy shall be filled by appointment of the Governor. The appointee shall serve until a successor is duly selected and qualified and until January 1 of the year following the next general election which is more than six months after such person's appointment.

Ga. Const. Art. 6, § 7, ¶ 3 and ¶ 4; Art. 5, § 2, ¶ 8 (a)

O.C.G.A. § 45-5-3

### **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 or of 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) Upon initial conviction for any felony in a trial court of this state or the United States, the convicted judge 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.

Ga. Const. Art. 6, § 7, ¶ 7

O.C.G.A. § 45-5-2

- 20. It is unlawful for the judges of the superior court to accept or hold office or employment in the executive branch of the state government, or any agency thereof, or in the legislative branch of the state government.

Ga. Const. Art. 1, § 2, ¶ 3

O.C.G.A. § 16-10-9 (a) (2)