



## NORTH CAROLINA SHERIFFS' ASSOCIATION

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### North Carolina Election Law for Sheriffs: Residency Requirement and Party Affiliation

This publication addresses two issues that arise frequently during an election year: (1) residency requirements for candidates for sheriff, and (2) party affiliation.

#### 1. The Residency Requirement

To be eligible to assume the Office of Sheriff if elected, a candidate must be 21 years of age or older, not have been convicted of a felony, and be “a qualified voter in the county in which the candidate is chosen.” G.S. § 162-2(a) (underline added). The age and voter requirements stem from the North Carolina Constitution. “Every qualified voter in North Carolina who is 21 years of age . . . shall be eligible for election by the people to office.” N.C. Const. Art. VI, § 6. See also N.C. Const. Art. VI, § 8. The provision that disqualifies felons from serving as sheriff also originates in the State Constitution. “No person is eligible to serve as Sheriff if that person has been convicted of a felony . . .” N.C. Const. Art. VII, § 2.

To be a qualified voter, an individual must be registered to vote in the precinct and have resided in the precinct for “30 days next preceding an election.” N.C. Const. Art. VI, §§ 2, 3. These requirements are also reflected in the North Carolina General Statutes. See G.S. §§ 163-54; 163-55. There is no requirement that an individual reside in the State for one-year prior to voting to be qualified to vote in a local election and, consequently, no requirement that a candidate for sheriff reside in the State for one-year prior to running for office. See *Andrews v. Cody*, 327 F. Supp. 793 (M.D.N.C. 1971) (one-year residence requirement held to be a violation of the Equal Protection Clause with respect to local elections), *aff’d* 405 U.S. 1034 (1972).

The 30-day residency requirement is calculated prior to the election. The “election” to which the 30-day residency requirement is calculated depends on whether the candidate is running for a political party nomination, unaffiliated, or as a write-in candidate. “For purposes of the 30-day residence requirement to vote in an election . . . the term ‘election’ means the day of the primary, second primary, general election, special election, or referendum.” G.S. § 163-55(c).

If the candidate is running for a political party nomination, the candidate must have resided in the county for 30 days by the date of the primary. If the candidate is running unaffiliated or as a write-in candidate, the candidate must have resided in the county for 30 days by the date of the general election. There is no 30-day residency requirement for filing a notice of candidacy, just to vote.

Hypothetically, a party candidate for sheriff in County A could move into and establish residency in County A (from out-of-county or out-of-state) on the last day to file a notice of

candidacy for the office under G.S. § 163-106.2(b). Then the candidate could update their voter registration to reflect their new in-county address and file their notice of candidacy on that same date. The candidate must be registered to vote in-county before they file their notice of candidacy and include a certificate of registration with the filing or their candidacy will be canceled per G.S. 163-106.5(b).

Assuming the above steps are taken, the party candidate will meet the 30-day residency requirement by the date of the primary and, assuming no other disqualifiers such as age, felony convictions, etc., will be eligible to run and assume office if elected.

If the candidate for sheriff is running unaffiliated, the dates change: the candidate must establish an in-county residence and be registered to vote in-county before the deadline for filing their petition to run unaffiliated, which, in the case of county elections, is 12:00 noon on the date of the primary election. G.S. § 163-122(a)(3). The 30-day residency requirement in this instance will be calculated in reference to the general election.

If the candidate for sheriff is running as a write-in candidate, the dates also change: the candidate must establish an in-county residence and be registered to vote in-county before the deadline for filing their petition and declaration of intent as a write-in candidate, which, in the case of county elections, is 12:00 noon on the 90<sup>th</sup> day preceding the general election. G.S. § 163-123(c)(3). The 30-day residency requirement in this instance will also be calculated in reference to the general election.

Needless to say, a candidate for sheriff must have the intent to maintain their residence in the county and, if their residency is challenged, must meet the burden of proof required by G.S. § 163-127.5(b). The candidate must prove: (1) an actual abandonment of the first domicile, coupled with an intent not to return to the first domicile; (2) the acquisition of a new domicile by actual residence at another place; and (3) the intent of making the newer domicile a permanent domicile. G.S. § 163-127.5(b).

## **2. Running as a Party Candidate versus Running Unaffiliated versus Running as a Write-In Candidate**

A candidate for sheriff has the option of running as a candidate for the nomination of a particular political party, running as an unaffiliated candidate, or running as a write-in candidate. These options are mutually exclusive, meaning a candidate may not run as a party candidate and then, upon defeat in the primary, attempt to run for the same office as an unaffiliated candidate or as a write-in candidate. G.S. §§ 163-122(b); 163-123(e).

### **a. Running as a Party Candidate**

If a candidate wishes to run for the nomination of a particular party (ex. Democratic, Republican, Libertarian), the candidate must have been affiliated with the party whose nomination the candidate seeks for at least 90 days prior to the date the candidate files their notice of candidacy. “No person shall be permitted to file as a candidate in a party primary unless that person has been affiliated with that party for at least 90 days as of the date of that person filing such notice of candidacy.” G.S. § 163-106.1. “A person registered as ‘unaffiliated’ shall be ineligible to file as a candidate in a party primary election.”

An individual is affiliated with a particular party by virtue of what is reflected on their voter registration. G.S. §§ 163-82.4(d); 163-59. If a candidate is affiliated with one party but wishes to

switch parties and run for another party or if the candidate is currently registered as unaffiliated and wants to run for a political party nomination, the candidate must change their party affiliation on their voter registration at least 90 days before the candidate files their notice of candidacy.

**b. Running Unaffiliated or as a Write-In Candidate**

If the candidate wants to run unaffiliated or as a write-in candidate, there appears to be no requirement that the candidate change their affiliation status on their voter registration. However, if the candidate has already filed their notice of candidacy for the nomination of a political party, the candidate must withdraw their notice of candidacy or their name will appear on the primary ballot for the office and they will be ineligible to run as an unaffiliated or write-in candidate in the general election for that same office. G.S. §§ 163-122(b); 163-123(e). The deadline to withdraw a notice of candidacy is, per G.S. § 163-106.4, before the close of business on the third business day before the last day to file a notice of candidacy.

If the candidate has not already filed as a primary candidate for any party, then the candidate must simply meet the deadline for filing the petition to run unaffiliated or the deadline to file the declaration of intent to run as a write-in candidate, as discussed above and as applicable.

**For Additional Information:**

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