

FORMAL OPINION

February 26, 1980

HON. DONALD P. LAN
Secretary of State
State House
Trenton, New Jersey 08625

FORMAL OPINION NO. 5—1980

Dear Secretary Lan:

You have requested an opinion as to whether a candidate for election to the Legislature must meet the qualifications for office set forth in the State Constitution by election day or by the day he assumes office. For the reasons set forth herein, you are advised that a candidate for the Senate or General Assembly must satisfy the minimum age requirement at the time that he is sworn into office, that he must have met the respective citizenship and residency qualifications by election day, and that he must be entitled to the right of suffrage on the day that he files a certificate of acceptance with the Secretary of State, be that at the time of filing a petition or upon accepting a write-in nomination.

The qualifications for eligibility for the Legislature are set forth in *N.J. Const.*, Art. IV, §1, par. 2:

No person shall be a member of the Senate who shall not have attained the age of thirty years, and have been a citizen and resident of the State for four years, and of the district for which he shall be elected one year, next before his election. No person shall be a member of the General Assembly who shall not have attained the age of twenty-one years and have been a citizen and resident of the State for two years, and of the district for which he shall be elected for one year, next before his election. No person shall be eligible for membership in the Legislature unless he be entitled to the right of suffrage.

Thus, a candidate for either the General Assembly or the Senate must meet a set of three general qualifications:

1. minimum age requirement (Senate—30 years; General Assembly—21 years),
2. citizenship and residency requirements (Senate—“citizen and resident of the State for four years, and of the district . . . one year”; General Assembly—“citizen and resident of the State for two years, and of the district . . . one year”), and a
3. requirement that he be entitled to the right of suffrage.

The general rule is that the time as of which eligibility to an office is to be determined is to be discovered in applicable statutes or constitutional provisions. *Murray v. Murray*, 7 N.J. Super. 549, 556 (Law Div. 1950). In this case, the phrase “next before his election” would not appear to qualify the respective minimum age requirements; indeed, such a coupling would not provide a sensible phrase sequence [*e.g.* “shall . . . have attained the age of thirty years, . . . next before his election”]. Since the minimum age is a requisite to “membership” in the Legislature, it must

ATTORNEY GENERAL

be assumed, in the absence of any further qualifier, that it must be satisfied by the time that the individual will be sworn into office. *Cf. Wurtzel v. Falcey*, 69 N.J. 401 (1976).

However, the phrase "next before his election" manifestly is intended to apply to the citizenship and residency requirements. Accordingly, by election day, a candidate for the Senate must "have been a citizen and resident of the State for four years and of the district . . . one year," and a candidate for General Assembly must "have been a citizen and resident of the State for two years and of the district . . . one year." These citizenship and residency requirements are computed backwards from election day.

The Constitution also sets forth as a requirement of membership in either house of the Legislature that the person be "entitled to the right of suffrage." A separate provision of the Constitution defines those persons who shall be entitled to the right of suffrage, *N.J. Const.*, Art. II, par. 3(a).^{*} Although the Constitution provides no definitive guide as to the time when this constitutional requirement must be satisfied, the procedural provisions of the election laws do impose certain requirements. In this regard, a candidate for the Legislature is obliged to file a petition with the Secretary of State to appear either on the primary election ballot or directly on the general election ballot. N.J.S.A. 19:13-3, 19:13-9, 19:23-6, 19:23-14. A candidate nominated for office in a petition must annex to such petition a certificate indicating, among other things, that "the candidate is a resident of and a legal voter in the jurisdiction of the office for which the nomination is made." N.J.S.A. 19:13-8, 19:23-15. Likewise, an individual nominated by write-in votes must thereafter file a similar certificate of acceptance. N.J.S.A. 19:23-16. In view of these statutory requirements, a candidate for the Legislature must be entitled to the right of suffrage at the time of filing a petition or, alternatively, at the time of filing a certificate accepting a write-in nomination.

You are therefore advised that a candidate for election to the Legislature must meet the qualifications for office set forth in the *New Jersey Constitution*, Art. IV, §1, par. 2 as follows: he must satisfy the minimum age requirement by the day he is sworn into office; he must meet the citizenship and residency requirements by election day, and he must be entitled to the right of suffrage on the day that he files a certificate with the Secretary of State accepting the nomination, be it as an accompaniment to his petition or in response to a write-in vote.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: JANICE S. MIRONOV
Deputy Attorney General

^{*}Art. II, par. 3(a) reads in relevant part:

Every citizen of the United States, of the age of 18 years, who shall have been a resident of this State and of the county in which he claims his vote 30 days, next before the election, shall be entitled to vote for all officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to a vote of the people.

See also, N.J.S.A. 19:4-1, 19:31-5.