

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

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

CLERK OF SUPERIOR COURT

Qualifications

1. Must have been a resident of the county for at least two years prior to qualifying for election to the office.

Annotation:

The residency requirement refers to domicile. There must be either the tacit or the explicit intention to change one's domicile before one can change his legal residence. If a person leaves the place of his domicile temporarily, or for a particular purpose, and does not take up an actual residence elsewhere with the allowed intention of making a change in his domicile, he will not be considered as having changed his domicile. *Haggard v. Graham*, 142 Ga. App. 498, 236 S.E.2d 92 (1977).

2. Must be a registered voter and must (unless serving as clerk on July 1, 1981) have attained the age of 25 years prior to the date of qualifying for election to the office.
3. Must have obtained a high school diploma or its recognized equivalent.
4. Must be a citizen of the United States.
5. Must be a citizen of the state and must not have been convicted of a felony or any offense involving moral turpitude.

Ga. Const. Art. 9, § 1, ¶ 3

O.C.G.A. §§ 45-2-1, 15-6-50

6. 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 clerk of superior court, prior to or at the time of qualifying, affirming that he or she meets the required qualifications for such office.

O.C.G.A. § 15-6-50

Term of Office and Election

7. Term of office is four years.
8. Elected by the qualified voters of the county.

Ga. Const. Art. 9, § 1, ¶ 3

9. Elected in the general election held on the Tuesday following the first Monday in November immediately preceding the expiration of the term of office.

O.C.G.A. § 21-2-9

10. A candidate for clerk 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 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 by 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).
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. 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 the 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

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

O.C.G.A. § 21-2-7

Bond Requirements

14. a) The clerks of superior court, except those appointed by the judge of the superior court and those becoming clerk by operation of law, must execute bond in the sum of \$25,000, which amount may be increased in any county by local act. O.C.G.A. § 15-6-59 (a)
- b) The bond shall be approved by the judge of the probate court, filed in that office, and recorded by the judge of the probate court. O.C.G.A. § 45-4-13
- c) The bond must be filed by the first day of January after the election. O.C.G.A. § 45-4-14
- d) The bond must be made payable to the Governor and his or her successor in office and conditioned upon the faithful discharge of the duties of the office. O.C.G.A. § 45-4-1
- e) The office of clerk of superior court shall be vacated upon failure to give bond within the time prescribed by the laws and the Constitution. 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 Office

15. Before entering upon the discharge of the duties of office (whether elected or appointed or acting by operation of law), the clerk of superior court must, in addition to the oaths required of all civil officers, take and subscribe to the following oath:

“I do swear that I will truly and faithfully enter and record all the orders, decrees, judgments, and other proceedings of the Superior Court of the County of _____, and all other matters and things which by law ought by me to be recorded; and that I will faithfully and impartially discharge and perform all the duties required of me, to the best of my understanding. So help me God.”

O.C.G.A. § 15-6-58

Annotation:

Governor may at his or her discretion provide that the oath of office of clerk of superior court may be administered by the judge of superior court. Op. Atty. Gen. U80-48.

16. 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 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.

17. 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

18. 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

19. The clerk of superior court can be removed from office by the judge of the superior court for any sufficient cause, including incapacity or misbehavior in office.

O.C.G.A. § 15-6-82

20. In the event of a vacancy in the office, the judge of the probate court must appoint some qualified person to discharge the duties until the vacancy is filled.

O.C.G.A. § 15-6-54 (a)

21. When a vacancy occurs and it is not more than six months from the time the election can be called by the judge of the probate court and held until the existing term will expire, the person or persons appointed shall discharge the duties of the office for the balance of the term, and there shall be no special election. If a special election is required, the person elected shall hold the office for the unexpired term.

O.C.G.A. §§ 15-6-54 (b), 15-6-56 (a) and (b)

Note:

See O.C.G.A. § 15-6-56 (c), concerning succession to the office by the chief deputy clerk, if any.

General Disqualifications

22. 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.
23. 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

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

O.C.G.A. § 45-2-2

Note:

Clerks of superior court are eligible to hold the office of clerk of the city or state court in the counties of their residence, on taking the oath and giving bond and security prescribed by law.

See O.C.G.A. § 15-6-51.

25. The clerk of superior court is prohibited from practicing law in his or her own or another's name, as partner or otherwise, in any court except in his or her own case.

O.C.G.A. § 15-6-52