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The State of South Carolina  
**OFFICE OF THE ATTORNEY GENERAL**

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

November 15, 1995

Ms. Debra Covington, Legislative/Research Asst.  
South Carolina Sheriffs' Association  
Post Office Box 21428  
Columbia, South Carolina 29221-1428

RE: Informal Opinion

Dear Ms. Covington:

By your recent letter to Attorney General Condon, you have sought an opinion on behalf of the South Carolina Sheriffs' Association, a clarification of S.C. Code Ann. §23-11-110 (1994 Cum. Supp.), as to when candidates for the office of sheriff must submit their fingerprints and affidavits concerning qualification to hold the office of sheriff.

Extensive qualifications to hold the office of sheriff have been established by the General Assembly in §23-11-110. Subsection (A)(7) requires that sheriffs

(7) be fingerprinted and have the State Law Enforcement Division make a search of local, state, and federal fingerprint files for any criminal record. Fingerprints are to be taken under the direction of any law enforcement agency and must be made available to SLED sixty days before the close of qualification for election to the office with the records search to be filed with the county executive committee of the person's political party. A person seeking nomination by petition must file the records search with the county election commission in the county of his residence. [Emphasis added.]

Further, subsection (B) requires:

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(B)(1) A person offering his candidacy for the office of sheriff, within sixty days before or at the time he qualifies, shall file a sworn affidavit with the county executive committee of the person's political party. The county executive committee of any political party with whom a person has filed his affidavit must file a copy of the affidavit with the appropriate county election commission by noon on the tenth day following the deadline for filing affidavits by candidates. If the tenth day falls on Saturday, Sunday, or a holiday,<sup>1</sup> the affidavits must be filed by noon on the following day. A person seeking nomination by petition must file a sworn affidavit with the county election commission in the county of his residence. [Emphasis added.]

(2) The affidavit must contain the following information:

....

(f) an affirmation that the person meets all of the qualification requirements of subsection (A).

You state that it is unclear when the time for qualification is: is it the time between the opening and closing for filing, or is it anytime prior to the closing date for filing, but at least sixty days prior to it?

Ordinarily, the time for determining a candidate's qualification for holding office is the date of election. State ex rel. Harrelson v. Williams, 157 S.C. 290, 154 S.E. 164 (1930). It appears that, by the adoption of §23-11-110 by the General Assembly, the General Assembly has created an exception to the usual rule, however. From the language of §23-11-110, the General Assembly seems to contemplate that a candidate for sheriff will be qualified by the end of the period in which he or she must file to become a candidate for the office of sheriff. The affidavit may be filed with the county executive committee of the person's political party as early as sixty days before the time closes for the person to declare his or her candidacy, or the time by which the person seeking nomination by petition must file with the county election commission. The affidavit must affirm that the person who offers his candidacy meets the qualification requirements in §23-11-110(A); the latest date on which that could occur would be the date of closing, in my opinion.

To offer as a candidate for the office of sheriff, one must establish that he is a citizen of the United States, a resident of the county in which he seeks election for the specified period of time, a registered voter, at least twenty-one years of age, qualified as to education and experience; that his criminal background meets the statutory requirements; and that his fingerprints have been checked according to the statute. Most

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especially the fingerprint check will take some time to complete, which could well account for the requirement that the fingerprints be made available to SLED sixty days before the close of "qualification for election to the office." If a person is not qualified to become a sheriff because he or she cannot meet one or more of the statutory requirements, it would be futile for that individual to be able to run in the primary or especially in the general election held in November of the appropriate year. Should that person win the nomination or the election yet be unqualified to serve, the primary or the general election would have been a futility; another election would be required at great public expense. I am of the opinion that the General Assembly could have had such considerations in mind as that body adopted §23-11-110, so that a person would be required to establish his or her qualification to hold the office no later than the end of the filing period, whenever that may be.

Therefore, based on the foregoing, I am of the opinion that the time for qualification by a person who would become a candidate for the office of sheriff would be the last day for filing his candidacy with the county executive committee or the county election commission, as may be appropriate. Because the statute is not entirely clear and thus this conclusion cannot be absolutely free from doubt, it might be wise to seek legislative clarification to be certain that this interpretation is in accord with legislative intent.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Senior Assistant Attorney General