When is a Candidate for Public Office in Florida Officially Elected

Paul D. Asfour*
WHEN IS A CANDIDATE FOR PUBLIC OFFICE IN FLORIDA OFFICIALLY ELECTED?

PAUL D. ASFOUR*

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The question has arisen, on many occasions, about when a candidate for public office in Florida is considered “officially elected.”1 Governors have requested opinions from the Supreme Court of Florida on the issue, since judicial vacancies occurred for various reasons, and the governors were unsure of whether they had the authority to appoint replacements or whether they had to wait for the election process to select them.2 In addition, county supervisors of elections have requested opinions determining the specific date a candidate is elected, from either the Florida Attorney General or Florida Department of State Division of Elections, for various other elected offices.3 This article will review the Florida Constitution, Florida Statutes, advisory opinions, and case law in an attempt to determine, with as much specificity as possible, the date when a candidate for public office in Florida is considered officially elected.

I. FLORIDA ELECTIONS AND THE SUNSHINE LAW

The word “election,” when standing alone, is defined as the act of choosing; choice; the act of selecting one or more from oth-

* Paul D. Asfour, J.D., M.B.A., C.P.A. is an Assistant Professor of Legal Studies at Florida Gulf Coast University. He received his law degree from the University of Miami School of Law.

2. E.g., Advisory Op. to the Governor re Judicial Vacancy Due to Resignation, 42 So. 3d 795, 796 (Fla. 2010) (per curiam); Advisory Op. to the Governor re Appointment or Election of Judges, 983 So. 2d 526, 528 (Fla. 2008).
ers. Hence, appropriately, the act of choosing a person to fill an office or employment by any manifestation of preference, as by vote, uplifted hands, or viva voce.4

Once elected, the candidate becomes a “candidate elect” and, therefore, subject to Florida’s Sunshine Law, which prohibits members of the same elected body (board, commission, council, etc.) from discussing matters that may foreseeably come before that elected body for a vote.5 As soon as the candidates-elect become subject to the Sunshine Law, they are also subject to penalties for violating it.6 However, there must be proof of scienter for there to be a criminal violation of the Sunshine Law.7 As a result, a violation could not occur by accident.8

Some may question why a candidate, immediately upon being elected, is subject to the Sunshine Law. Why not wait until the individual takes the oath of office, and actually begins his term? That seems logical, and would obviously avoid the issue about which date controls when the candidate becomes subject to the Sunshine Law.

That issue was addressed by the Third District Court of Appeal in the case of Hough v. Stembridge.9 Following a special election in the City of North Miami Beach, meetings were held between an incumbent councilman who was elected mayor, and two other individuals who were elected to the office of city council but were not incumbents.10 One of the meetings took place before the individuals had taken their respective oaths of office.11 The

7. Bd. of Pub. Instruction v. Doran, 224 So. 2d 693, 699 (Fla. 1969); see also FLA. STAT. § 286.011(3).
8. See Bd. of Pub. Instruction v. Doran, 224 So. 2d 693, 699 (Fla. 1969); see also FLA. STAT. § 286.011(3).
10. Id.
11. Id.
trial court found that all three individuals had violated Florida Statutes section 286.011.\footnote{12} The appellants argued that the trial court erred in ruling that they had violated the statute since the first meeting between them took place when two of them were councilmen-elect, and only one of them was an elected official subject to the statute.\footnote{13} Consequently, they claimed that they were not members of a governing body subject to the Sunshine Law.\footnote{14}

The court stated:

\begin{quote}
We find the position untenable to hold on the one hand that Florida Statute[s] [section] 286.011 is applicable to elected board or commission members who have been officially sworn in and on the other hand inapplicable to members-elect who as yet merely have not taken the oath of public office. An individual upon immediate election to public office loses his status as a private individual and acquires the position more akin to that of a public trustee. Therefore, we hold that members-elect of boards, commissions, agencies, etc. are within the scope of the Government in the Sunshine Law. To hold otherwise would be to frustrate and violate the intent of the statute which “having been enacted for the public benefit, should be interpreted most favorably to the public.”\footnote{15}
\end{quote}

As stated previously, the Sunshine Law does not apply to candidates for office prior to the date on which they are considered elected, “unless the candidate is an incumbent seeking reelection.”\footnote{16} However, it would not necessarily be considered a violation of the Sunshine Law if an incumbent candidate in attendance at a candidates’ forum expressed his or her opinion on a matter that “may foreseeably come before” that elected body for a vote.\footnote{17} Furthermore, a non-incumbent may express his opinion on a matter that could foreseeably come before the elected body for a vote as long as there was no discussion taking place between an incumbent and another member of the board who happened to be in attendance at the forum.\footnote{18}

\begin{enumerate}
\item \footnote{12} \textit{Id.} at 289–90 (citing FLA. STAT. § 286.011(1); Canney v. Bd. of Pub. Instruction, 278 So. 2d 260, 263 (Fla. 1973)).
\item \footnote{13} \textit{Id.} at 289.
\item \footnote{14} \textit{Hough,} 278 So. 2d at 289.
\item \footnote{15} \textit{Id.} at 289–90 (quoting \textit{Canney,} 278 So. 2d at 263); \textit{see also} FLA. STAT. § 286.011.
\item \footnote{16} Sunshine Law, Candidates’ Night/Political Forum, 92-05 Fla. Op. Att’y Gen. 2 (1992); \textit{see also} FLA. STAT. § 286.011.
\item \footnote{17} 92-05 Fla. Op. Att’y Gen. 2; \textit{see also} FLA. STAT. § 286.011.
\item \footnote{18} 92-05 Fla. Op. Att’y Gen. 2.
\end{enumerate}
II. DATE OF ELECTION

The most logical date a candidate could be considered elected is the date of the general election, assuming there was more than one candidate who qualified for the race, votes were counted, and a winner declared. But what about a candidate who qualified for the seat, but ran unopposed, whether or not he was the incumbent? Would it be the date the qualifying period ended, the date of the election, the date the election results are certified as official, or the date the term begins? Unfortunately, a 2010 Supreme Court of Florida advisory opinion, discussed below, complicated the issue.

*Florida Statutes* section 100.041 details how various Florida officials shall be elected and in one case, when an officer of one elective office—county commissioner—is considered elected. It would be an overstatement to consider it the definition of clarity.

*Florida Statutes* section 100.041(2)(a) provides that “[a] county commissioner is ‘elected’ for purposes of this paragraph on the date that the county canvassing board certifies the results of the election pursuant to section 102.151.” However, no mention is made of when other officers listed in that section are considered elected.

What is puzzling about the language in *Florida Statutes* section 100.041(2)(a) is that, according to the court in *Morse v. Dade County Canvassing Board*, (1) the county canvassing board does not have “standing to challenge . . . election results,” and (2) the circuit court does not have jurisdiction unless there is a challenge to “an election result filed by [either] a candidate or an elector qualified to vote in the election.”

Although *Florida Statutes* section 102.112(2) provides that a canvassing board must certify the results by the twelfth day after the general elec-

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19. See *Fla. Stat.* § 100.031.
20. See Advisory Op. to the Governor re Judicial Vacancy Due to Resignation, 42 So. 3d 795, 798 (Fla. 2010) (per curiam).
22. See *id.* § 100.041.
23. *Id.* § 100.041(2)(a).
24. See *id.* § 100.041.
26. *Id.* at 1314; see also *Fla. Stat.* § 100.041(2)(a).
tion, it can do so before then. Consequently, a county commissioner from one county could be considered elected at a time different than a county commissioner from another county, even though the election was held on the same day and the results were clear. That result would appear to conflict with Florida Statutes section 97.012(2), which mandates “uniform standards for the proper and equitable implementation of the registration laws.” The Morse decision, coupled with both Florida Statutes section 97.012(2), and the fact that the various county canvassing boards can meet at different times, mandates a careful review of the language in Florida Statutes section 100.041(2)(a).

The question about when an unopposed candidate is considered elected is even more unsettled. Florida Statutes section 101.151(7) provides: “Except for justices or judges seeking retention, the names of unopposed candidates shall not appear on the general election ballot. Each unopposed candidate shall be deemed to have voted for himself or herself.” The implication is that the unopposed candidate voted for himself or herself at the general election and not at any other time during the election process, such as on the date the qualifying period ended, or on the date of the primary election. Therefore, is the person elected on that date, or on the date the canvassing board meets to certify the election results?

III. JUDICIAL VACANCIES

The Supreme Court of Florida further muddied the waters in an advisory opinion to Governor Charlie Crist in 2010. Although the advisory opinion concerns a judicial vacancy and is specific to the facts of the case, it complicated the matter for the Florida Department of State, which renders advisory opinions to Florida Supervisors of Elections and other interested parties regarding when a candidate is considered elected.

27. See Fla. Stat. § 102.112(2).
28. See id.
29. Id. § 97.012(2). Compare id. § 102.112(2), with id. § 97.012(2).
30. See Fla. Stat. §§ 97.012(2), 102.112(2), 100.041(2)(a); Morse, 456 So. 2d at 1314–15.
32. See id.
33. Advisory Op. to the Governor re Judicial Vacancy Due to Resignation, 42 So. 3d 795, 798 (Fla. 2010) (per curiam).
In that case, incumbent Escambia County Court Judge David Ackerman qualified for the seat on April 28, 2010.\(^{35}\) The qualifying period ran from noon on April 26, 2010 to noon on April 30, 2010.\(^{36}\) Since no other candidate qualified, the judge was unopposed at the time the qualifying period ended.\(^{37}\)

Judge Ackerman’s current term was to expire on January 3, 2011, with his new term beginning on January 4, 2011.\(^{38}\) However, he submitted a resignation letter to Governor Crist on May 24, 2010, which was accepted by the Governor on May 28, 2010.\(^{39}\) That resignation created a judicial vacancy that would last for approximately seven months—until his new term began on January 4, 2011—if the Governor could not name a replacement prior to the date of the election.\(^{40}\) To compound the uncertainty, Judge Ackerman stated that he would not “resume his judicial duties until February 1, 2011.”\(^{41}\)

The first question that must be answered is when the vacancy occurred. Article X, section 3 of the Florida Constitution states:

> Vacancy in office shall occur upon the creation of an office, upon the death, removal from office, or resignation of the incumbent or the incumbent’s succession to another office, unexplained absence for sixty consecutive days, or failure to maintain the residence required when elected or appointed, and upon failure of one elected or appointed to office to qualify within thirty days from the commencement of the term.\(^{42}\)

Consequently, the vacancy created by Judge Ackerman’s resignation occurred on the date Governor Crist accepted the resignation, May 28, 2010.\(^{43}\)

Unfortunately, the Florida Constitution contains two sections that address “judicial” vacancies.\(^{44}\) Article V, section 11(b) states:

\(^{35}\) Advisory Op. to the Governor re Judicial Vacancy Due to Resignation, 42 So. 3d at 795–96.
\(^{36}\) Id. at 795.
\(^{37}\) Id. at 796.
\(^{38}\) Id. at 795.
\(^{39}\) Id.
\(^{40}\) Advisory Op. to the Governor re Judicial Vacancy Due to Resignation, 42 So. 3d at 796.
\(^{41}\) Id.
\(^{42}\) Fla. Const. art. X, § 3 (emphasis added).
\(^{43}\) Advisory Op. to the Governor re Judicial Vacancy Due to Resignation, 42 So. 3d at 795, 796.
\(^{44}\) Fla. Const. art. V, §§ 10(b)(1)–(2), 11(b).
The governor shall fill each vacancy on a circuit court or on a county court, wherein the judges are elected by a majority vote of the electors, by appointing for a term ending on the first Tuesday after the first Monday in January of the year following the next primary and general election occurring at least one year after the date of appointment, one of not fewer than three persons nor more than six persons nominated by the appropriate judicial nominating commission. An election shall be held to fill that judicial office for the term of the office beginning at the end of the appointed term.  

On the other hand, article V, section 10(b)(1) provides that:

The election of circuit judges shall be preserved . . . unless a majority of those voting in the jurisdiction of that circuit approves a local option to select circuit judges by merit selection and retention rather than by election. The election of circuit judges shall be by a vote of the qualified electors within the territorial jurisdiction of the court.

Section 10(b)(2) states the same for county judges, substituting the term “circuit” with “county.”

The Supreme Court of Florida previously determined that how a judicial vacancy should be filled depended upon when the vacancy occurred. The vacancy would be filled by appointment if it occurred before the qualifying period began and would be filled by election if the vacancy occurred after the election process began. The court determined that the election process began at the beginning of the statutory qualifying period. That date was chosen to promote consistency in the process of filling judicial vacancies, since it was a fixed point marking the commencement of the election process.

In Judge Ackerman’s case, the court stated that since his candidacy

45. Id. § 11(b).
46. Id. § 10(b)(1).
47. Id. § 10(b)(2).
48. Advisory Op. to the Governor re Sheriff & Judicial Vacancies Due to Resignations, 928 So. 2d 1218, 1220 (Fla. 2006) (citing Advisory Op. to the Governor re: Appointment or Election of Judges, 824 So. 2d 132, 136 & n.9 (Fla. 2002)).
49. Id. (citing Advisory Op. to the Governor re: Appointment or Election of Judges, 824 So. 2d at 136).
50. Advisory Op. to the Governor re Appointment or Election of Judges, 983 So. 2d 526, 529 (Fla. 2008) (quoting Advisory Op. to the Governor re Sheriff & Judicial Vacancies Due to Resignations, 928 So. 2d at 1221).
51. Id. at 530 (citing Advisory Op. to the Governor re: Appointment or Election of Judges, 824 So. 2d at 136).
was uncontested, pursuant to section 105.051 [of the] Florida Statutes, he was deemed elected to serve as a judge on the Escambia County Court for the term beginning January 4, 2011. Thus, this particular election process ended on April 30, 2010, when the qualifying period ended, and no individual other than Judge Ackerman can now fill the vacancy by election.52

The language in Florida Statutes section 105.051(1)(a) is similar to the language in Florida Statutes section 101.151(7).53 Section 105.051(1)(a) states: “The name of an unopposed candidate for the office of circuit judge, county court judge, or member of a school board shall not appear on any ballot, and such candidate shall be deemed to have voted for himself or herself at the general election.”54 Once again, the implication is that the unopposed candidate voted for himself or herself at the “general election,” and not at any other time during the election process.55 If the legislature did not intend for the date of the general election to be the determining date for election of an unopposed candidate for office, it could have so stated by providing a different date. It did not.56

The court continued:

[A]n incumbent office holder resigned after the election process had effectively concluded. A vacancy was thus created at a time when the election process had ceased. There is no issue here with regard to preserving the right of the people to elect county court judges. Instead, the issue is whether an incumbent judge who had been reelected without opposition may then retire from office and leave a judgeship vacant for an extended period before resuming the duties of the office when it is convenient for him to do so.57

IV. CHANGE FROM PREVIOUS POSITION

The Supreme Court of Florida distinguished the Ackerman case from others that it had addressed previously regarding whether a judicial vacancy

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52. Advisory Op. to the Governor re Judicial Vacancy Due to Resignation, 42 So. 3d 795, 797 (Fla. 2010) (per curiam) (emphasis added); see also Fla. Stat. § 105.051(1)(a) (2012).
55. See id.
56. See id. §§ 101.151(7), 105.051(1)(a), 105.051(1)(c).
57. Advisory Op. to the Governor re Judicial Vacancy Due to Resignation, 42 So. 3d at 797.
should be filled by appointment or election. The Ackerman decision also appears to contradict both an earlier supreme court opinion and an earlier attorney general opinion concerning when a “county commission” candidate is elected.

In opinion 74-293, the attorney general was asked to answer the following four questions posed by the attorney for Clay County. Only the first three are relevant to the issue presented here: (1) Whether “a county commissioner [must] be a resident of the . . . district in which he [was] elected;” (2) whether he must be a resident at the time of election or at the time he qualified for the position; (3) when the candidate must become a resident of the district to which he was elected, if not at the time of qualifying; and (4) whether “the name of [the] candidate . . . [must] be removed from the ballot if it [was] determined that [he] did not reside in the district [to] which he [was] elect[ed] at the time” he qualified for the position.

The attorney general relied on article VIII, section 1(e), of the Florida Constitution, which provides:

\[(e)\] Commissioners. Except when otherwise provided by county charter, the governing body of each county shall be a board of county commissioners composed of five or seven members serving staggered terms of four years. After each decennial census the board of county commissioners shall divide the county into districts of contiguous territory as nearly equal in population as practicable. One commissioner residing in each district shall be elected [by the electors of the county].

58. See Advisory Op. to the Governor re Appointment or Election of Judges, 983 So. 2d 526, 529–30 (Fla. 2008) (holding that a vacancy created “during a qualifying period in which any candidate qualifies for the judicial office is to be filled by election” where the vacancy arose due to the involuntary retirement of a county court judge during the qualifying period); Advisory Op. to the Governor re Sheriff & Judicial Vacancies Due to Resignations, 928 So. 2d 1218, 1219–20 (Fla. 2006) (holding that vacancy occurred when the Governor accepted the resignation of a circuit court judge on April 14, 2006, and that because the vacancy was created before the qualifying period commenced on May 8, 2006, the position was to be filled by appointment); Advisory Op. to the Governor re: Appointment or Election of Judges, 824 So. 2d 132, 135–36 (Fla. 2002) (holding that a vacancy created when a judge involuntarily retired after the conclusion of the qualifying period—in which the incumbent judge did not qualify for election but three other candidates did qualify—was to be filled by election).


61. Id.

62. FLA. CONST. art. VIII, § 1(e) (emphasis added).
Therefore, the attorney general concluded, in the answer to the second question posed in opinion 74-293, that “a candidate did not have to meet the residence requirements at the time of qualifying for office.”

However, the attorney general raised an interesting caveat in the answer to the second question, which could obviously pose other problems for a candidate.64

[The execution of the candidate oath at a time when the candidate is not a resident of the appropriate district raises the possibility of conflict with statutory provisions relating to false swearing and perjury and, therefore, the suggested practice would be for a candidate to establish his residence in the appropriate district prior to qualifying for office.]

In response to the third question posed in opinion 74-293, the attorney general stated:

[The language of [article VIII, section 1(e) of the Florida Constitution] requires residence in the appropriate county commission district as of the day of the election. Accordingly, in order to be sure of complying with this constitutional provision, a candidate should establish his residence in the district he seeks to represent by no later than the day before the election.]

Fourteen years later, the Supreme Court of Florida reinforced the decision reached in opinion 74-293.67 In State v. Grassi,68 William Grassi was charged with violating a statute imposing residency qualifications.69 Grassi intended to run for Broward County commissioner in District 4, but decided to run in District 3 when he “learn[ed] that the seat in District 4 was not open.”70 Grassi was charged

with knowingly and unlawfully qualifying as a candidate for Broward County Commissioner, District 3, without being a resident thereof, in violation of section 99.032, Florida Statutes (1983). Section 99.032 requires that “[a] candidate for the office of county

64. See id.
65. Id. (citations omitted).
66. Id.
68. 532 So. 2d 1055 (Fla. 1988).
69. Id. at 1055.
70. Id.
commissioner shall, at the time he qualifies, be a resident of the district from which he qualifies,” violation of which is a first-degree misdemeanor.71

The trial court held that section 99.032 was inconsistent with article VIII, section 1(e) of the Florida Constitution and dismissed the case against Grassi.72 The district court affirmed the order to dismiss.73 The supreme court approved the district court’s ruling, stating, “if article VIII, section 1(e), of the Florida Constitution provides qualifications for the office of county commissioner, the legislature is prohibited from imposing any additional qualifications.”74 The court concluded by stating that “[t]he Florida Constitution requires residency at the time of election. Therefore, section 99.032 [of the] Florida Statutes is unconstitutional as it imposes the additional qualification for the office of county commissioner of residency at the time of qualifying for election.”75

The Supreme Court of Florida, based upon its decision in Grassi, confirmed that a candidate for county commission was not considered elected on the date he qualified for the position.76

With that decision in hand, the obvious question is why the Supreme Court of Florida decided that Ackerman was considered elected after the qualifying period ended without any other candidate having qualified. The decision is especially puzzling considering that it appears to conflict with Florida Statutes section 105.051(1)(a), as previously stated.77 It may have something to do with the reason behind Ackerman’s resignation coupled with his intention to reclaim his seat on his own terms.78 In other words, the court may have sent a message to all public officials who wanted to use the system to their own advantage.

72. Grassi, 532 So. 2d at 1056; see also Fla. Const. art. VIII, § 1(e); Fla. Stat. § 99.032.
73. Grassi, 532 So. 2d at 1056.
74. Id.
75. Id. (emphasis added); see also Fla. Const. art. VIII, §1(e); Fla. Stat. § 99.032.
76. See Grassi, 532 So. 2d at 1056.
77. See supra notes 53–59 and accompanying text; see also Fla. Stat. § 105.051(1)(a) (2012); Advisory Op. to the Governor re Judicial Vacancy Due to Resignation, 42 So. 3d 795, 796–98 (Fla. 2010) (per curiam).
78. See Advisory Op. to the Governor re Judicial Vacancy Due to Resignation, 42 So. 3d at 797–98.
According to published reports, Ackerman resigned so he could collect a lump sum retirement payout of nearly $1.3 million. 79 He informed the same reporter that he intended to return to the bench “next year” as a result of his de facto reelection. 80 However, if he returned to the bench before an unspecified date in 2011, he would be required to return the lump sum payment. 81

With that in mind, the court made it clear that it did not appreciate what it may have perceived as Judge Ackerman’s attempt to manipulate the system, especially when it had a negative impact on the citizens Judge Ackerman was sworn to serve. 82 “The consideration that must predominate here is the right of the people of Escambia County to the services of a county judge when the incumbent has presented himself to the people for reelection but then has laid aside the duties of his office.” 83 The court continued by stating, “[a] judgeship is not an office that may be temporarily forsaken at will for personal benefit. When a vacancy arises from such circumstances, the Governor may properly fill the vacancy by appointment pursuant to article V, section 11(b).” 84

The “from such circumstances” portion of the last sentence quoted above seems to indicate that the situation was unique, and if the circumstances warrant, a different outcome may be in the offing. 85 Nevertheless, the decision that an unopposed candidate was deemed elected at the conclusion of the qualifying period has compounded the problem for those who provide opinions on such matters such as the Florida Attorney General and the Florida Department of State Division of Elections. 86

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79. Kris Wernowsky, Judge’s Quick Exit Nets $1.3 Million, PENSACOLA NEWS J., May 27, 2010, at 1A.
80. Id.
81. See id.
82. See Advisory Op. to the Governor re Judicial Vacancy Due to Resignation, 42 So. 3d at 797–98.
83. Id. at 797 (citing In re Advisory Op. to the Governor (Judicial Vacancies), 600 So. 2d 460, 462 (Fla. 1992)).
84. Id. at 798 (emphasis added); see also FLA. CONST. art. V, §11(b).
85. See Advisory Op. to the Governor re Judicial Vacancy Due to Resignation, 42 So. 3d at 798.
V. MOST RECENT ADVISORY OPINION

A July 26, 2010 letter from the Division of Elections highlights the dilemma faced by those who render opinions on election matters. The Pinellas County Supervisor of Elections requested an interpretation of the Election Code as it pertained to when state legislators and county commissioners were considered elected.

The Pinellas County Supervisor of Elections asserted that it was logical that a candidate be considered “officially elected on the date when the election results are certified as official.” The Division of Elections’ response highlighted the uncertainty created by the Ackerman decision: “While this may be a proper conclusion under some circumstances, it is not possible or practicable for the Division to definitively establish this as the election date for all purposes under the Election Code.”

Addressing the Ackerman decision, the Division of Elections stated that when a candidate is considered elected depends on the facts presented. “[A] candidate could be deemed elected on Election Day, on the date when the final canvassing board certifies the election results, on a date specified by a court in an election case, or some other date as dictated by the particular factual circumstances at issue.”

A candidate elected on the date that the canvassing board meets to certify the results of the election is impractical, “consider[ing] that an ‘election’ . . . trigger[s] . . . deadlines and activities that occur both before and after Election Day.”

88. Id. at 1.
89. Id.
90. Id. at 1, 2 (emphasis added).
91. Id. at 2, 4; see also FLA. CONST. art. V, § 10; FLA. STAT. § 100.181 (2012).
93. Id. at 3; see also FLA. CONST. art. III, § 3(a) (stating that the legislature shall convene “[o]n the fourteenth day following each general election . . . [for] organization and selection of officers”); FLA. STAT. § 101.68(2)(a) (2009) (amended 2011) (“The county canvassing board may begin the canvassing of absentee ballots at 7 a.m. on the sixth day before the election, but not later than noon on the day following the election.”); FLA. STAT. § 101.657(d) (2009) (amended 2011) (“Early voting shall begin on the 15th day before an election and end on the 2nd day before an election.”); FLA. STAT. § 97.053(6) (2006) (amended 2007) (stating that a “provisional ballot shall be counted . . . if the applicant presents evidence . . . sufficient to verify [certain information provided on the application by] 5 p.m. of the second day following the election”).

Obviously, these constitutionally and statutorily-mandated activities depend on an election taking place on a date certain, and that date being Election Day. If an election ends when the results are certified, it would be meaningless for a voter applicant to submit information to verify
The Division of Elections letter concludes by providing that it may be practical, although not legal, to consider a candidate as being elected when the results are certified. As a matter of fact, opinion 82-26 by the Division of Elections opined that very fact. Unfortunately, “[h]owever, the Florida Constitution, Florida Election Code, and related authorities conclusively establish that a candidate may be deemed ‘elected’ on another day, e.g., the day of an ‘election’ under a particular factual situation.” “In fact, section 100.181 [of the Florida Statutes] entitled ‘Determination of person elected,’ without mentioning the certification of results, merely states: ‘The person receiving the highest number of votes cast in a general or special election for an office shall be elected to the office.’”

VI. CONCLUSION

It is imperative that the uncertainty surrounding when a candidate for public office in Florida is considered elected be resolved. That should be done, not only for the candidates, but also for the Division of Elections, the county supervisors of elections, and city and county attorneys charged with advising candidates and elected officials about what may constitute a violation of the Florida Sunshine Law, among other things.

The uncertainty, should, and could, be easily remedied if the Florida Legislature simply reviewed the various election statutes and made them consistent, or simply wrote an additional election statute that addressed the issue. Of course, it is essential that any new statutes, or amendments to existing statutes, do not conflict with the Florida Constitution. In addition,
a constitutional amendment would also be in order if there were provisions in the Florida Constitution that conflict with one another.¹⁰⁰

Finally, the answer to when a candidate for public office in Florida is considered officially elected can be boiled down to the first two words a first-year law student learns when asked a question...“it depends.”

¹⁰⁰. See Advisory Op. to the Governor re: Appointment or Election of Judges, 824 So. 2d 132, 136 (Fla. 2002).