

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

ASHLEY BRYANT,
Petitioner,

v.

ANITA HOWARD,
Respondent.

**Docket No.: 2028512
2028512-OSAH-SECSTATE-CE-11-
Howells**

Agency Reference No.: 2028512

**INITIAL DECISION AND
ORDER GRANTING MOTION TO DISMISS**

On March 2, 2020, Respondent Anita Howard signed a Declaration of Candidacy and Affidavit seeking to be a candidate for District Attorney in the Macon Judicial District. Thereafter, Petitioner Ashley Bryant (“Petitioner”) filed with the Secretary of State a challenge of Ms. Howard’s qualification to run for the office of District Attorney in the Macon Judicial District. Specifically, Petitioner asserted that Ms. Howard is not a resident of the Macon Judicial District, primarily based on her ownership of property located in Houston County and her declaration of a homestead exemption on that property.

On April 3, 2020, Respondent filed a Motion to Dismiss Petitioner’s challenge to her candidacy asserting that this court does not have jurisdiction to address Respondent’s residency as the question is not yet ripe. Respondent relies on Georgia Code Section 15-18-3, which states, in pertinent part, as follows: “To be eligible to fill the office of district attorney, a person must: . . . [p]ermanently reside in the circuit at the time of his election or appointment.” O.C.G.A. § 15-18-3(2). In the motion, Ms. Howard acknowledges that she previously declared a homestead exemption on property that she owns in Houston County. Nonetheless, she asserts that she has since had the homestead exemption removed and, in any event, her previous failure to remove the homestead exemption is irrelevant as the date that she must be a permanent resident is the date of

her election.

On April 13, 2020, Petitioner filed an Objection to Respondent's Motion to Dismiss for Lack of Jurisdiction and Brief in Support Thereof. Petitioner asserts that the challenge to Ms. Howard's residence is ripe for review. Specifically, Petitioner asserts that if Respondent's interpretation of the statute is accepted there would be no legal way for a citizen of a judicial district to challenge the residency of a candidate for district attorney until after the election has taken place. Petitioner further asserts that the "only logical measuring stick to utilize for the purposes of residency is the date of qualification of candidacy." Petitioner's argument is without merit. "In construing statutes, courts shall look diligently for the intention of the General Assembly. The words of a statute should be given a reasonable and sensible interpretation to carry out the legislative intent and render the statute valid." *Cox v. Barber*, 275 Ga. 415, 416 (2002). However, where the words of a statute are plain and unequivocal, "judicial construction is not only unnecessary but is forbidden." *Jessup v. Bennett*, 226 Ga. 606, 609 (1970). Here the words could not be plainer. "To be eligible to fill the office of district attorney, a person must: . . . [p]ermanently reside in the circuit **at the time of his election** or appointment." O.C.G.A. § 15-18-3(2) (emphasis added). Furthermore, Georgia courts have interpreted statutes referencing "election" as the date from which to determine residency to mean the general election, not the date of qualification. *See Cox*, at 416.

In Petitioner's objection to Respondent's Motion to Dismiss, Petitioner raises issues regarding Respondent's credibility and possible voter fraud and false swearing. However, Petitioner has cited no authority that any of those allegations are grounds to disqualify Respondent as a candidate. Accordingly, because the residency requirement for the office of district attorney is determined at the time of election, this matter is not ripe, and this court lacks jurisdiction.

Petitioner's challenge is hereby **DISMISSED**.

SO ORDERED, this 14th day of April, 2020.



Stephanie M. Howells

Stephanie M. Howells
Administrative Law Judge



NOTICE OF INITIAL DECISION

Attached is the Initial Decision of the administrative law judge. A party who disagrees with the Initial Decision may file a motion with the administrative law judge and/or an application for agency review.

Filing a Motion with the Administrative Law Judge

A party who wishes to file a motion to vacate a default, a motion for reconsideration, or a motion for rehearing must do so within 10 days of the entry of the Initial Decision. Ga. Comp. R. & Regs. 616-1-2-.28, -.30(3). All motions must be made in writing and filed with the judge's assistant, with copies served simultaneously upon all parties of record. Ga. Comp. R. & Regs. 616-1-2-.04, -.11, -.16. The judge's assistant is Kevin Westray - 404-656-3508; Email: kwestray@osah.ga.gov; Fax: 404-656-3508; 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303.

Filing an Application for Agency Review

A party who seeks review by the referring agency must file an application for agency review within 30 days after service of the Initial Decision. O.C.G.A. §§ 50-13-17(a), -41. **In nearly all cases, agency review is a prerequisite for judicial review.** O.C.G.A. § 50-13-19(a).

The application for agency review must be filed with: SECRETARY OF STATE, 2 MARTIN LUTHER KING JR. DRIVE, SUITE #802 WEST TOWER, ATLANTA, GA 30334 . Copies of the application for agency review must be served upon all parties of record and filed simultaneously with the OSAH Chief Clerk at 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303. If a timely application for agency review is not filed and the referring agency does not review the Initial Decision on its own motion, the Initial Decision will become the Final Decision of the referring agency by operation of law. O.C.G.A. §§ 50-13-17(a), -41.