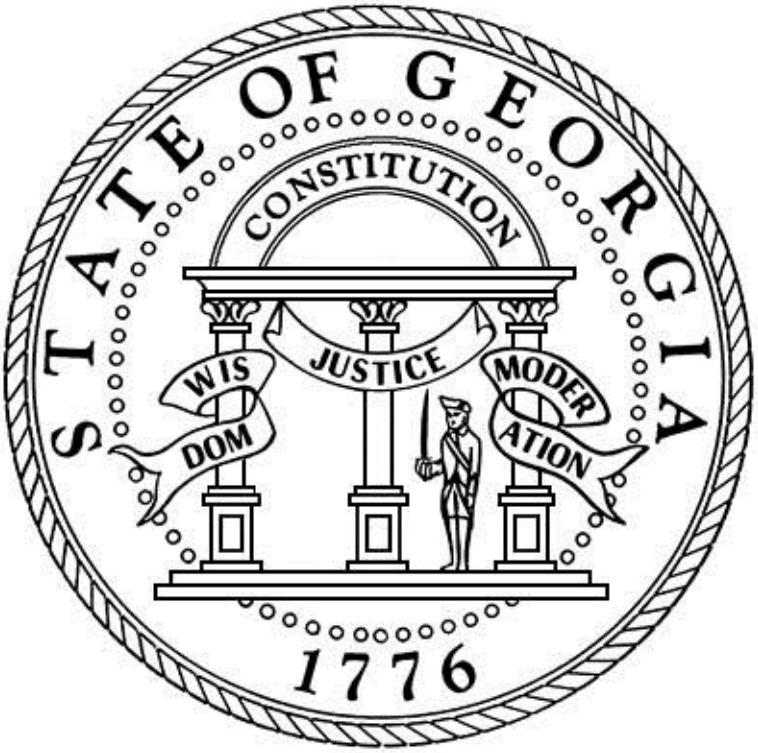
Qualifications and Disqualifications for Holding State or County Elective Office in Georgia

Contains Provisions of Georgia Election Code As Amended through Regular Legislative Sessions 2013



Published by
Brian P Kemp
Secretary of State
Atlanta, Georgia 30334

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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.

Preface

Qualifications and Disqualifications for Holding State or County Elective Office in Georgia was first published in 1969 at the request of the Secretary of State and has been revised several times since that date. The publication has been helpful to persons interested in running for elective public office, to those conducting elections, and to other state officials.

The 1999 and 2013 revisions of Qualifications and Disqualifications for Holding State or County Elective Office in Georgia were prepared by Betty J. Hudson, J.D., and Christine Kuykendall, J.D., legal research associates, and Ellen W. Smith, legal research assistant, Applied Research and Publications Division, Carl Vinson Institute of Government. The 1987 revision was prepared by Paul T. Hardy, J.D., a legal research associate in the Institute's Governmental Research and Services Division. The 1986 version of this publication was prepared by Kenneth A. Duke, legal research specialist, under the general supervision of J. Devereaux Weeks, J.D., legal research associate, also of the Governmental Research and Services Division.

Appreciation is expressed to Linda Beazley, director, Elections Division, Office of the Secretary of State, for her assistance in reviewing the manuscript for this revision.

Persons utilizing this book are cautioned that the laws briefly summarized and cited in this document are complex and lengthy and overlap in several areas. The user should recognize and understand that this book provides, in summary form, only the basic, not an exhaustive, list of requirements for holding state and county offices in Georgia. Anyone 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 O.C.G.A. for possible additional requirements for holding a particular state or county elective or appointed office.

C.R. Swanson
Director
Carl Vinson Institute of Government

August 2013

Introduction

At the request of the Secretary of State, this publication has been prepared as a basic guide for persons desiring to hold state or county office or the office of United States Senator or Representative, and for election officials assisting such persons.

The book briefly summarizes the basic qualifications and disqualifications found in the Georgia Constitution, the Official Code of Georgia Annotated, and the United States Constitution for holding the United States offices of Senator and Representative, state and county elective offices, and certain appointed offices. Following the summaries are citations to the constitutional and statutory provisions summarized. Selected state and federal court decisions and opinions of the Georgia Attorney General interpreting these constitutional and statutory provisions are also included. "Georgia Constitution" citations refer to the Constitution of the State of Georgia, 1983 (Vol. 2 of the Official Code of Georgia Annotated); and "O.C.G.A." citations refer to the Official Code of Georgia Annotated, published by Lexis Law Publishing, Charlottesville, Virginia.

The summaries relating to each elective office are organized under the general headings of Qualifications, Term of Office and Election, Bond Requirements, Oath of Office, Vacancies in and Succession to Office, and General Disqualifications. For those appointed offices included here, the summaries refer to the Term of Office and Appointment of that office. "Notes" or "annotations" follow a number of the summaries and their citations. Notes provide supplementary information about the summarized constitutional or statutory provision. Annotations are abstracts of Georgia and federal court decisions and Georgia Attorney General opinions interpreting the summarized constitutional or statutory provisions. The reader is cautioned that Georgia Attorney General opinions are not laws, and the courts are not controlled by them. Nevertheless, they should be considered high legal authority on problems that have not been addressed by the courts.

This 2013 revision contains amendments enacted in the regular 2013 session of the Georgia General Assembly.

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UNITED STATES SENATOR

Qualifications

1. Must have attained the age of 30 years.
2. Must have been a citizen of the United States for nine years.
3. Must be an inhabitant of the state for which chosen when elected.

U.S. Const. Art. 1, § 3

Annotation:

A majority vote statute does not unconstitutionally add to the Constitution's exclusive list of qualifications for the office of United States Senator. Public Citizen, Inc. v. Miller, 992 F 2d. 1548 (1993).

Term of Office and Election

4. Term of office is six years. Elected by the people of the state. The electors must have the qualifications requisite for the electors of the most numerous branch of the state legislature. Two Senators are elected from the state.

U.S. Const. Amend. XVII
O.C.G.A. § 21-2-216

5. The times, places, and manner of holding elections for Senators shall be prescribed in the state by the legislature thereof; but the Congress may at any time by law make or alter such regulations except as to the places of choosing Senators.

U.S. Const. Art. 1, § 4

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

O.C.G.A. §§ 21-2-2(15), 21-2-9

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).

7. The terms end at noon on the third day of January of the year in which such term would end, and the terms of their successors shall then begin.

U.S. Const. Amend. XX, § 1

8. Any vacancy occurring in the representation of the state in the Senate of the United States shall be filled for the unexpired term by the vote of the electors of the state at a special election to be held at the time of the next November election, occurring at least 40 days after the occurrence of such vacancy. Until such time as the vacancy shall be filled by an election, the Governor may make a temporary appointment to fill the vacancy.

O.C.G.A. § 21-2-542

Oath of Office

9. The Senator shall be bound by oath or affirmation to support the U.S. Constitution.

   U.S. Const. Art. 6, § 3

General Disqualifications

10. During the time for which elected, a Senator shall not be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of the U.S. Senate during his or her continuance in office.

    U.S. Const. Art. 1, § 6

    Annotations:

    i. The primary, if not the sole, purpose of the bar against a member of Congress holding executive office is to maintain the independence among the branches of the government. Reservists Committee to Stop the War v. Laird, 323 F. Supp. 833 (D.C.D.C. 1971) (overruled as to standing only by Schlesinger v. Reservists Committee to Stop the War, 418 U.S. 209 (1974)).

    ii. Generally in the case of incompatible offices, acceptance of the second office vacates the first. Id.

    iii. A member of Congress is ineligible to hold a commission in the Armed Forces Reserve during his or her continuance in office, which is an office under the United States. Id.

11. No Senator shall be appointed a presidential elector.

    U.S. Const. Art. 2, § 1, cl. 2

12. 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, judge of superior court, district attorney, any elected county officer, and any elected municipal officer.

    O.C.G.A. § 21-2-136

REPRESENTATIVE, UNITED STATES CONGRESS

Qualifications

1. Must have attained the age of 25 years.
2. Must have been a citizen of the United States for seven years.
3. Must be an inhabitant of the state in which chosen when elected.

U.S. Const. Art. 1, § 2

Term of Office and Election

4. Elected every second year by the people of the state. The electors must have the qualifications requisite for the electors of the most numerous branch of the state legislature. The number of Representatives from each state is determined by the population of the state.

   U.S. Const. Art. 1, § 2
   O.C.G.A. § 21-2-216

5. The times, places, and manner of holding elections for Representatives shall be prescribed in each state by the legislature thereof; but Congress may at any time by law make or alter such regulations.

   U.S. Const. Art. 1, § 4

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

   O.C.G.A. §§ 21-2-2 (15), 21-2-9

   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).

   Annotation:
   The only qualifications a candidate must possess to be eligible to seek the office of United States Representative are those enumerated in the U.S. Const. Art. 1, Section 2, Paragraph 2. Op. Atty. Gen 83-62.

7. The terms of U.S. Representatives shall end at noon on the third day of January of the year in which such term would end, and the terms of their successors shall then begin.

   U.S. Const. Amend. XX, § 1

8. Whenever a vacancy occurs in the office of Representative in Congress, the Governor shall issue, within 10 days after the occurrence of such vacancy, a writ of election to the Secretary of State for a special election to fill such vacancy, which election shall be held on the date named in the writ, which shall not be less than 30 days after its issuance. Upon receiving the writ of election from the Governor, the Secretary of State shall transmit the writ of election to the superintendent of each county involved and shall publish the call of the election.

O.C.G.A § 21-2-543

Oath of Office

9. The Representative shall be bound by oath or affirmation to support the U.S. Constitution.

   U.S. Const. Art. 6, § 3

General Disqualifications

10. During the time for which elected, a Representative shall not be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of the U.S. House of Representatives during his or her continuance in office.

    U.S. Const. Art. 1, § 6

    Annotations:

    i. The primary, if not the sole, purpose of the bar against a member of Congress holding executive office is to maintain the independence among the branches of the government. Reservists Committee to Stop the War v. Laird, 323 F. Supp. 833 (D.C.D.C. 1971) (overruled as to standing only by Schlesinger v. Reservists Committee to Stop the War, 418 U.S. 209 (1974)).

    ii. Generally in the case of incompatible offices, acceptance of the second office vacates the first. Id.

    iii. A member of Congress is ineligible to hold a commission in the Armed Forces Reserve during his or her continuance in office, which is an office under the United States. Id.

11. No Representative shall be appointed a presidential elector.

    U.S. Const. Art. 2, § 1

12. 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, judge of superior court, district attorney, any elected county officer, and any elected municipal officer.

    O.C.G.A. § 21-2-136

GOVERNOR

Qualifications

1. Must have been a citizen of the United States for 15 years.
2. Must have been a legal resident of Georgia for six years immediately preceding the election.
3. Must have attained the age of 30 years by the date of assuming office.

Ga. Const. Art. 5, § 1, ¶ 4

Term of Office and Election

4. Term of office is four years and until a successor is chosen and qualified. Persons holding the office of Governor may succeed themselves for one four-year term of office. Persons who have held the office of Governor and have succeeded themselves cannot be elected to that office until after the expiration of four years from the conclusion of their term as Governor.

Ga. Const. Art. 5, § 1, ¶ 1

Annotation:

The phrase "until his successor shall be chosen and qualified," has a recognized and definite meaning. The time in excess of the four-year period which a Governor may be required to serve is a part of his constitutional term. His installation in office is for a term embracing not only the four years mentioned, but such additional time as may be required for his successor to be chosen and qualified. Thompson v. Talmadge, 201 Ga. 867, 41 S.E.2d 883 (1947).

5. The election for Governor shall be held quadrennially (every four years) on the Tuesday after the first Monday in November next preceding the expiration of the term of office unless another date be fixed by the General Assembly, and the Governor-Elect shall be installed in office at the next session of the General Assembly.

Ga. Const. Art. 5, § 1, ¶ 2
O.C.G.A. §§ 21-2-9, 45-12-1

6. The election shall be held at the places of holding general elections in the several counties of the state, in the manner prescribed for the election of members of the General Assembly, and the electors shall be the same.

Ga. Const. Art. 5, § 1, ¶ 2

Annotation:

It is settled in this state and in many other jurisdictions of this country that an election is absolutely void when not held in the proper time and place and by persons qualified to hold it. Davis v. Page, 217 Ga. 751, 125 S.E.2d 60 (1962).

7. A candidate for Governor 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:

i. *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).*
ii. *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.*
iii. *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 the ex-officio position held by the incumbent. Op. Atty. Gen. 70-53.*
iv. *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).*

8. In the event that a candidate pays his or her qualifying fee with a check that is subsequently returned for insufficient funds, the Secretary of State shall automatically find that such candidate has not met the qualifications for holding the office being sought, unless the bank, credit union, or other financial institution returning the check certifies in writing by an officer's or director's oath that the bank, credit union, or financial institution erred in returning the check.

   O.C.G.A. § 21-2-5 (d)

9. 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 state general or no later than seven days after the close of the special election qualifying period for a special election. In a general special election of county officers,
      i. notice must be filed with the Secretary of State and published in a paper of general circulation in the state 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
      ii. a copy of the notice as published and an affidavit that the notice has been published, including the name of the newspaper and date of publication, must be filed with the Secretary of State 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

10. 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, judge of superior court, district attorney, any elected county officer, and

any elected municipal officer.

O.C.G.A. § 21-2-136

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

    O.C.G.A. § 21-2-7

Oath of Office

12. The Governor-Elect shall, before he or she enters on the duties of office, take the following oath in the presence of the General Assembly in joint session of the Senate and House of Representatives: "I do solemnly swear or affirm that I will faithfully execute the office of Governor of the State of Georgia and will, to the best of my ability, preserve, protect, and defend the Constitution thereof and the Constitution of the United States."

    Ga. Const. 5, § 1, ¶ 6
    O.C.G.A. § 45-12- 4

    Cross-References:
    a. The federal constitution requires that the Governor be bound by oath or affirmation to support the federal constitution. See U.S. Const., Art. 6, cl. 3.
    b. Any public officer who willfully and intentionally violates the terms of his or her oath as prescribed by law shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than five years. O.C.G.A. §16-10-1.
13. 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.

14. 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:
    i. 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.

ii. *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

15. All elected or appointed offices are deemed vacant upon the incumbent's;
    a. death or resignation;
    b. ceasing to be a resident of the state, county, or district from which elected;
    c. 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

16. In case of the death, resignation, or permanent disability of the Governor or the Governor-Elect, the Lieutenant Governor or Lieutenant Governor-Elect, upon becoming the Lieutenant Governor, becomes the Governor until a successor is elected and qualified. A successor to serve for the unexpired term shall be elected at the next general election; but if such death, resignation, or permanent disability occurs within 30 days of the next general election or if the term will expire within 90 days after the next general election, the Lieutenant Governor becomes Governor for the unexpired term.

    Ga. Const. 5, § 1, ¶ 5(b)

    Annotations:

    i. *The voluntary resignation of the Governor immediately imposes upon the Lieutenant Governor the duties of Governor. The Lieutenant Governor is then entitled to perform all duties and exercise all authority of Governor. Thompson v. Talmadge, 201 Ga. 867, 41 S.E.2d 883 (1947).*
    ii. *While exercising executive powers, the Lieutenant Governor does not serve as Governor, but rather as an acting Governor until a successor can be elected and qualified to fill the unexpired term of Governor. Op. Atty. Gen. 1948- 49, p. 403.*
    iii. *The Lieutenant Governor, who does not want to become candidate for the unexpired term of Governor, is not required to resign his or her office after having served as acting Governor. He or she may continue to serve as Lieutenant Governor until the four-year term to which he or she was elected expires. Op. Atty. Gen. 1948-49, p. 403.*
    iv. *Governor's absence from state does not constitute "disability" under this paragraph. Op. Atty. Gen 67-293.*
    v. *Upon a petition of any of the four elected constitutional executive officers to the Supreme Court of Georgia that another elected constitutional executive officer is unable to perform the duties of office because of a physical or mental disability, the Supreme Court shall by appropriate rule provide for a speedy and public hearing on such matter, including notice of the nature and cause of the accusation, process for obtaining witnesses, and the assistance of counsel. Evidence at such hearing shall include testimony from not fewer than three qualified physicians in private practice, one of whom must be a psychiatrist.*

Constitution Art. 5, § 4, ¶ 2.

General Disqualifications

17. 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. §§ 21-2-8, 45-2-1

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:

i. 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).

ii. 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).

iii. *A convicted felon who has had his or her civil rights restored is eligible to vote andhold public office. Op. Atty. Gen. U77- 43.*

iv. *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.*

v. *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).*

vi. *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).*

vii. *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).*

viii. *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).*

ix. *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).

x. *An indictment alone would not disqualify a person as a candidate for public office.Op. Atty. Gen. U68-102.*

xi. *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.*

xii. *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.*

xiii. *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.*

18. 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, the state constitution 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.

    Ga. Const. Art. 2, § 3, ¶¶ 1 and 2
    O.C.G.A. § 45-5-2

19. It is unlawful for the officers of the executive branch of the state government to accept or hold office or employment in the legislative or judicial branches of the state government.

    Ga. Const. Art. 1, § 2, ¶ 3
    O.C.G.A. § 16-10-9 (a) (3)

LIEUTENANT GOVERNOR

Qualifications

1. Must have been a citizen of the United States for 15 years.
2. Must have been a legal resident of Georgia for six years immediately preceding the election.
3. Must have attained the age of 30 years by the date of assuming office.

Ga. Const. Art. 5, § 1, ¶ 4

Annotations:

i. *The requirement that the Lieutenant Governor must have attained age of 30 years when he or she assumes office is constitutionally valid. The Lieutenant Governor may be called upon to exercise powers of the office of Governor and, therefore, the similar maturity requirement for Lieutenant Governor is reasonable. Traylor v. Democratic Party of Georgia, 241 Ga. 429, 246 S.E.2d 192 (1978).*

ii. *In a suit seeking to declare a Governor ineligible to hold the office of Lieutenant Governor, it was held that the two offices are separate and distinct. The state constitution does not prohibit one ineligible for the office of Governor for ensuing four-year term from being eligible to hold office of Lieutenant Governor for the same term. Smith v. Maddox, 227 Ga. 198, 179 S.E.2d 745 (1971); Henderson v. Maddox, 227 Ga. 195, 179 S.E. 2d 770 (1971).*

Term of Office and Election

4. Term of office is four years and until a successor is chosen and qualified.

Ga. Const. Art. 5, § 1, ¶ 3; Art. 5, § 1, ¶ 1

5. Lieutenant Governor is elected at the same time, for the same term, and in the same manner as the Governor.

Ga. Const. Art. 5, § 1, ¶ 3

6. The election for Lieutenant Governor shall be held quadrennially (every four years) on the Tuesday after the first Monday in November next preceding the expiration of the term of office unless another date be fixed by the General Assembly, and the Lieutenant Governor-Elect shall be installed in office at the next session of the General Assembly.

Ga. Const. Art. 5, § 1, ¶ 2
O.C.G.A. § 21-2-9

7. The election shall be held at the places of holding general elections in the several counties of the state, in the manner prescribed for the election of members of the General Assembly, and the electors shall be the same.

Ga. Const. Art. 5, § 1, ¶ 2

Annotation:

It is settled in this state and in many other jurisdictions of this country that an election is absolutely void when not held in the proper time and place and by persons qualified to hold it. Davis v. Page, 217 Ga. 751, 125 S.E.2d 60 (1962).

8. A candidate for Lieutenant Governor 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:
   - *i. 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).*
   - *ii. 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.*
   - *iii. 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 the ex-officio position held by the incumbent. Op. Atty. Gen. 70-53.*
   - *iv. 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).*

9. In the event that a candidate pays his or her qualifying fee with a check that is subsequently returned for insufficient funds, the Secretary of State shall automatically find that such candidate has not met the qualifications for holding the office being sought, unless the bank, credit union, or other financial institution returning the check certifies in writing by an officer's or director's oath that the bank, credit union, or financial institution erred in returning the check.

   O.C.G.A. § 21-2-5 (d)

10. 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 state general or no later than seven days after the close of the special election qualifying period for a special election. In a general special election of county officers,
       i. notice must be filed with the Secretary of State and published in a paper of general circulation in the state 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
       ii. a copy of the notice as published and an affidavit that the notice has been published, including the name of the newspaper and date of publication, must be filed with the Secretary of State 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

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, judge of superior court, district attorney, any elected county officer, and any elected municipal officer.

O.C.G.A. § 21-2-136

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

    O.C.G.A. § 21-2-7

13. In case of the temporary disability of the Governor, the Lieutenant Governor shall exercise the powers and duties of the Governor and receive the same compensation as the Governor until such time as the temporary disability of the Governor ends.

    Ga. Const. Art. 5, § 1, ¶ 5 (a)

Oath of Office

14. The Lieutenant Governor-Elect shall, before he or she enters on the duties of office, take the following oath in the presence of the General Assembly in joint session of the Senate and House of Representatives:

    "I do solemnly swear or affirm that I will faithfully execute the office of Lieutenant Governor of the State of Georgia and will, to the best of my ability, preserve, protect, and defend the Constitution thereof and the Constitution of the United States."

    Ga. Const. Art. 5, § 1, ¶ 6
    O.C.G.A. § 45-12- 4

    Cross-Reference:
    Any public officer who willfully and intentionally violates the terms of his or her oath as prescribed by law shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than five years.

    O.C.G.A. §16-10-1

15. 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.

16. 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:
    i. 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.
    ii. 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

17. In case of vacancy by resignation, death, or otherwise, the successor shall be appointed by the Governor or elected only for the remainder of the unexpired term.

    Ga. Const. Art. 5, § 2, ¶ 8
    O.C.G.A. § 45-5-3

18. All elected or appointed offices are deemed vacant upon the incumbent's
    a. death or resignation;
    b. ceasing to be a resident of the state, county, or district from which elected;
    c. 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. Vacancy resulting when Lieutenant Governor serves as Governor:
    a. In case of the death, resignation, or permanent disability of the Governor or the Governor-Elect, the Lieutenant Governor or the Lieutenant Governor-Elect, upon becoming the Lieutenant Governor, becomes the Governor until a successor is elected and qualified. A successor to serve for the unexpired term shall be elected at the next general election; but, if such death, resignation, or permanent disability occurs within 30 days of the next general election or if the term will expire within 90 days after the next general election, the Lieutenant Governor becomes Governor for the unexpired term.
    b. No person shall be elected or appointed to the office of the Lieutenant Governor for the unexpired term in the event the Lieutenant Governor shall become Governor.

Ga. Const. Art. 5, § 1, ¶ 5 (b)

Annotations:

i. *The voluntary resignation of the Governor immediately imposes upon the Lieutenant Governor the duties of Governor. The Lieutenant Governor is then entitled to perform all duties and exercise all authority of Governor. Thompson v. Talmadge, 201 Ga. 867, 41 S.E.2d 883 (1947).*
ii. *While exercising executive powers, the Lieutenant Governor does not serve as Governor, but rather as an acting Governor until a successor can be elected and qualified to fill the unexpired term of Governor. Op. Atty. Gen. 1948- 49, p. 403.*
iii. *The Lieutenant Governor, who does not want to become candidate for unexpired term of Governor, is not required to resign his or her office after having served as acting Governor. He may continue to serve as Lieutenant Governor until the four-year term to which he or she was elected expires. Op. Atty. Gen. 1948- 49, p. 403.*
iv. *The Governor's absence from the state does not constitute "disability" under this paragraph. Op. Atty. Gen. 67-293.*
v. *The Lieutenant Governor does not succeed to the office of Governor in the event of a vacancy. Rather, the executive power devolves upon the Lieutenant Governor so that the state government can continue to function until a Governor is chosen by the people as provided by law. Henderson v. Maddox, 227 Ga. 195, 179 S.E. 2d 770 (1971).*

General Disqualifications

20. 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.

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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:

i. *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).*
ii. *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).*
iii. *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.*
iv. *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.*
v. *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 WL69072 (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).

vi. *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).*

vii. *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).*

viii. *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).*

ix. *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).*

x. *An indictment alone would not disqualify a person as a candidate for public office.Op. Atty. Gen. U68-102.*

xi. *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.*

xii. *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.*

xiii. *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.*

21. 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, the state constitution 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.

    Ga. Const. Art. 2, § 3, ¶¶ 1 and 2
    O.C.G.A. § 45-5-2

22. It is unlawful for the officers of the executive branch of the state government to accept or hold office or employment in the legislative or judicial branches of the state government.

Ga. Const. Art. 1, § 2, ¶ 3
O.C.G.A. § 16-10-9 (a) (3)

SECRETARY OF STATE

Qualifications

1. Must have been a citizen of the United States for 10 years.
2. Must have been a legal resident of the state for four years immediately preceding election or appointment.
3. Must have attained the age of 25 years by the date of assuming office.

Ga. Const. Art. 5, § 3, ¶ 2

Annotation:

The word "election" as it appears in these provisions means the day votes are cast, not the day when they are finally tabulated and certified by the Secretary of State. Poythress v. Moses, 250 Ga. 452, 298 S.E. 2d 480 (1983).

Term of Office and Election

4. Elected for term of four years in the manner prescribed for the election of members of the General Assembly, and the electors shall be the same. Elected at the same time and for the same term as the Governor.

Ga. Const. Art. 5, § 3, ¶ 1; Art. 5, § 1, ¶ 1
O.C.G.A. § 45-13-1

5. Elected in general election held every four years on the Tuesday after the first Monday in November next preceding the expiration of the term of the office, unless another date be fixed by the General Assembly.

Ga. Const. Art. 5, § 3, ¶ 1; Art. 5, § 1, ¶ 2
O.C.G.A. §§ 45-13-1, 21-2-9

Annotation:

It is settled in this state and in many other jurisdictions of this country that an election is absolutely void when not held in the proper time and place and by persons qualified to hold it. Davis v. Page, 217 Ga. 751, 125 S.E.2d 60 (1962).

6. A candidate for Secretary of State 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:

i. *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).*
ii. *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.*
iii. *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 the ex-officio position held by the incumbent. Op. Atty. Gen. 70-53.

iv. *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).*

7. In the event that a candidate pays his or her qualifying fee with a check that is subsequently returned for insufficient funds, the Secretary of State shall automatically find that such candidate has not met the qualifications for holding the office being sought, unless the bank, credit union, or other financial institution returning the check certifies in writing by an officer's or director's oath that the bank, credit union, or financial institution erred in returning the check.

   O.C.G.A. § 21-2-5 (d)

8. 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 state general or no later than seven days after the close of the special election qualifying period for a special election. In a general special election of county officers,
      i. notice must be filed with the Secretary of State and published in a paper of general circulation in the state 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
      ii. a copy of the notice as published and an affidavit that the notice has been published, including the name of the newspaper and date of publication, must be filed with the Secretary of State 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

9. 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, judge of superior court, district attorney, any elected county officer, and any elected municipal officer.

   O.C.G.A. § 21-2-136

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

O.C.G.A. § 21-2-7

Bond Requirements

11.
    a. A candidate must give bond and security in the amount of $10,000 for faithful discharge of duties. Ga. Const. Art. 5, § 3, ¶ 2; O.C.G.A. § 45-13-2
    b. The bond must be filed in the office of the Governor within 40 days after the election or appointment. O.C.G.A. §§ 45-13-2, 45- 4-14
    c. 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
    d. The office of Secretary of State must be vacated upon failure to give bond within the time prescribed by the laws and 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

12. The Georgia Constitution does not prescribe a specific oath of office for the Secretary of State, but one may be prescribed by law. The U.S. Constitution requires that an oath be taken to support the U.S. Constitution.

    Ga. Const. Art. 5, § 3, ¶ 2
    U.S. Const. Art. 6, cl. 3

13. 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.

    Cross-Reference:
    Any public officer who willfully and intentionally violates the terms of his or her oath as prescribed by law shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than five years. O.C.G.A. §16-10-1.

14. 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:

i. *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.*
ii. *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

15. All elected or appointed offices are deemed vacant upon the incumbent's
    a. death or resignation;
    b. ceasing to be a resident of the state, county, or district from which elected;
    c. 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

16. In case of vacancy by resignation, death, or otherwise, the successor shall be appointed by the Governor or elected only for the remainder of the unexpired term.

    Ga. Const. Art. 5, § 2, ¶ 8
    O.C.G.A. § 45-5-3

17. In case of the death or withdrawal of a person who received the majority of votes cast in an election for the office of Secretary of State, Attorney General, State School Superintendent, Commissioner of Insurance, Commissioner of Agriculture, or Commissioner of Labor, the Governor elected at the same election, upon becoming Governor, shall have the power to fill such office by appointing, subject to confirmation of the Senate, an individual to serve until the next general election and until a successor for the balance of the unexpired term shall have been elected and qualified.

    Ga. Const. Art. 5, § 2, ¶ 8

General Disqualifications

18. 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:

i. *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).*
ii. *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).*
iii. *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.*
iv. *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.*
v. *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).

vi. *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).*

vii. *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).*

viii. *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).*

ix. *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).*

x. *An indictment alone would not disqualify a person as a candidate for public office. Op. Atty. Gen. U68-102.*

xi. *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.*

xii. *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.*

xiii. *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.*

19. 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, the state constitution 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.

Ga. Const. Art. 2, § 3, ¶¶ 1 and 2
O.C.G.A. § 45-5-2

20. It is unlawful for the officers of the executive branch of the state government to accept or hold office or employment in the legislative or judicial branches of the state government.

Ga. Const. Art. 1, § 2, ¶ 3; Art. 5, § 4, ¶ 1
O.C.G.A. § 16-10-9 (a) (3)

ATTORNEY GENERAL

Qualifications

1. Must have been a citizen of the United States for 10 years.
2. Must have been a legal resident of the state for four years immediately preceding election or appointment.
3. Must have attained the age of 25 years by the date of assuming office.

   Annotation:

   The word "election" as it appears in these provisions means the day votes are cast, not the day when they are finally tabulated and certified by the Secretary of State. Poythress v. Moses, 250 Ga. 452, 298 S.E. 2d 480 (1983).

4. Must have been an active-status member of the State Bar of Georgia for seven years.

   Ga. Const. Art. 5, § 3, ¶ 2

5. Must not engage in the private practice of law during his or her term of office.

   O.C.G.A. § 45-15-30

Term of Office and Election

6. Elected for term of four years in the manner prescribed for the election of members of the General Assembly, and the electors shall be the same. Elected at the same time and for the same term as the Governor.

   Ga. Const. Art. 5, § 3, ¶ 1; Art. 5, § 1, ¶ 1
   O.C.G.A. § 45-15-1

7. Elected in general election held every four years on the Tuesday after the first Monday in November next preceding the expiration of the term of office, unless another date fixed by the General Assembly.

   Ga. Const. Art. 5, § 3, ¶ 1; Art. 5, § 1, ¶ 2
   O.C.G.A. § 45-15-1

   Annotation:

   It is settled in this state and in many other jurisdictions of this country that an election is absolutely void when not held in the proper time and place and by persons qualified to hold it. Davis v. Page, 217 Ga. 751, 125 S.E.2d 60 (1962).

8. A candidate for Attorney General 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:

   i. 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).

ii. *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.*

iii. *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 compen-sation paid for the ex-officio position held by the incumbent. Op. Atty. Gen. 70-53.*

iv. *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).*

9. In the event that a candidate pays his or her qualifying fee with a check that is subsequently returned for insufficient funds, the Secretary of State shall automatically find that such candidate has not met the qualifications for holding the office being sought, unless the bank, credit union, or other financial institution returning the check certifies in writing by an officer's or director's oath that the bank, credit union, or financial institution erred in returning the check.

   O.C.G.A. § 21-2-5 (d)

10. 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.
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    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 state general or no later than seven days after the close of the special election qualifying period for a special election. In a general special election of county officers,
       i. notice must be filed with the Secretary of State and published in a paper of general circulation in the state 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
       ii. a copy of the notice as published and an affidavit that the notice has been published, including the name of the newspaper and date of publication, must be filed with the Secretary of State 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

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12. No person shall be nominated or elected who has been adjudged a "subversive person," as defined in the Sedition and Subversive Activities Act of 1953.
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Bond Requirements

13.
    a. candidate must give bond and security for faithful discharge of duties. Ga. Const. Art. 5, § 3, ¶ 2
    b. The bond is required to be filed in the office of the Governor within 40 days after the election or appointment. O.C.G.A. § 45- 4-14
    c. 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
    d. The office of Attorney General must be vacated upon failure to give bond within the time prescribed by the laws and constitution. No official acts shall be performed until the bond is approved and filed as required.

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Oath of Office

14. The Georgia Constitution does not prescribe a specific oath of office for the Attorney General, but one may be prescribed by law. The U.S. Constitution requires that an oath be taken to support the U.S. Constitution.

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15. Every public officer must take the oath of office and any oath prescribed by the Constitution of Georgia and must swear that he or sheis not the holder of any unaccounted for public money due this state; 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; is otherwise qualified to hold said office according to the constitution and laws of Georgia; and will support the constitutions of the United States and of this state.

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    Note:
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    Cross-Reference:
    Any public officer who willfully and intentionally violates the terms of his or her oath as prescribed by law shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than five years. O.C.G.A. §16-10-1.

16. 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.

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i. *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.*
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    c. 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

18. In case of vacancy by resignation, death, or otherwise, the successor shall be appointed by the Governor or elected only for the remainder of the unexpired term.

    Ga. Const. Art. 5, § 2, ¶ 8
    O.C.G.A. § 45-5-3

19. In case of the death or withdrawal of a person who received the majority of votes cast in an election for the office of Secretary of State, Attorney General, State School Super-intendent, Commissioner of Insurance, Commissioner of Agriculture, or Commissioner of Labor, the Governor elected at the same election, upon becoming Governor, shall have the power to fill such office by appointing, subject to confirmation of the Senate, an individual to serve until the next general election and until a successor for the balance of the unexpired term shall have been elected and qualified.

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    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.
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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.
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"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).

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Annotations:

i. To prevent persons convicted of certain crimes from holding office, the "convition" 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).

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iii. 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.

iv. The conviction of the crime of "having liquor" does not render a person disquali-fied from holding public office if at the time of commission such crime carried only misdemeanor punishment. Op. Atty. Gen. 67-26.

v. 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).

vi. *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).*

vii. *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.2d2 (1993).*

viii. *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).*

ix. *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).*

x. *An indictment alone would not disqualify a person as a candidate for public office.Op. Atty. Gen. U68-102.*

xi. *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.*

xii. *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.*

xiii. *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.*

21. 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, the state constitution 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.

    Ga. Const. Art. 2, § 3, ¶¶ 1 and 2
    O.C.G.A. § 45-5-2

22. It is unlawful for the officers of the executive branch of the state government to accept or hold office or employment in the legislative or judicial branches of the state government.

STATE SCHOOL SUPERINTENDENT

Qualifications

1. Must have been a citizen of the United States for 10 years.
2. Must have been a legal resident of the state for four years immediately preceding election or appointment.
3. Must have attained the age of 25 years by the date of assuming office.

   Ga. Const. Art. 5, § 3, ¶ 2

   Annotation:

   The word "election" as it appears in these provisions means the day votes are cast, not the day when they are finally tabulated and certified by the Secretary of State. Poythress v. Moses, 250 Ga. 452, 298 S.E. 2d 480 (1983).

4. To render a person eligible to hold the office of State School Superintendent, he or she shall hold a four-year degree from an accredited college or university.

   O.C.G.A. § 20-2-31

5. No member of the State Board of Education shall be eligible for election as State School Superintendent during the time for which such member shall be appointed.

   Ga. Const. Art. 8, § 3, ¶ 1

Term of Office and Election

6. Elected for term of four years in the manner prescribed for the election of members of the General Assembly, and the electors shall be the same. Elected at the same time and for the same term as the Governor.

   Ga. Const. Art. 5, § 3, ¶ 1; Art. 5, § 1, ¶ 1; Art. 8, § 3, ¶ 1
   O.C.G.A. § 20-2-30

7. Elected in general election held every four years on the Tuesday after the first Monday in November next preceding the expiration of the term of office, unless another date is fixed by the General Assembly.

   Ga. Const. Art. 5, § 3, ¶ 1; Art. 5, § 1, ¶ 2; Art. 8, § 3, ¶ 1
   O.C.G.A. §§ 20-2-30, 21-2-9

   Annotation:

   It is settled in this state and in many other jurisdictions of this country that an election is absolutely void when not held in the proper time and place and by persons qualified to hold it. Davis v. Page, 217 Ga. 751, 125 S.E.2d 60 (1962).

8. A candidate for State School Superintendent 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:

i. *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).*
ii. *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.*
iii. *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 the ex-officio position held by the incumbent. Op. Atty. Gen. 70-53.*
iv. *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).*

9. In the event that a candidate pays his or her qualifying fee with a check that is subsequently returned for insufficient funds, the Secretary of State shall automatically find that such candidate has not met the qualifications for holding the office being sought, unless the bank, credit union, or other financial institution returning the check certifies in writing by an officer's or director's oath that the bank, credit union, or financial institution erred in returning the check.

   O.C.G.A. § 21-2-5 (d)

10. 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 state general or no later than seven days after the close of the special election qualifying period for a special election. In a general special election of county officers,
       i. notice must be filed with the Secretary of State and published in a paper of general circulation in the state 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
       ii. a copy of the notice as published and an affidavit that the notice has been published, including the name of the newspaper and date of publication, must be filed with the Secretary of State 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

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, judge of superior court, district attorney, any elected county officer, and any elected municipal officer.

O.C.G.A. § 21-2-136

12. No person shall be nominated or elected who has been adjudged a "subversive person," as defined in the Sedition and Subversive Activities Act of 1953.
O.C.G.A. § 21-2-7

Bond Requirements

13.
    a. candidate must give bond and security in amount the of $50,000 for faithful discharge of duties. Ga. Const. Art. 5, § 3, ¶ 2 O.C.G.A. § 20-2-32
    b. The bond must be filed in the office of the Secretary of State within 40 days after the election or appointment. O.C.G.A. §§ 20-2-32, 45- 4-14
    c. 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
    d. The office of State School Superintendent must be vacated upon failure to give bond within the time prescribed by the laws and 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

14. The Georgia Constitution does not prescribe a specific oath of office for the State School Superintendent, but one may be prescribed by law. The U.S. Constitution requires that an oath be taken to support the U.S. Constitution.

    U.S. Const. Art. 6, cl. 3
    Ga. Const. Art. 5, § 3, ¶ 2

15. The State School Superintendent must take and subscribe an oath to discharge the duties of his or her office diligently and faithfully.

    O.C.G.A. § 20-2-32

    Cross-Reference:
    Any public officer who willfully and intentionally violates the terms of his or her oath as prescribed by law shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than five years. O.C.G.A. §16-10-1.

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:
    i. *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.*
    ii. *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
    a. death or resignation;
    b. ceasing to be a resident of the state, county, or district from which elected;
    c. 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. In case of vacancy by resignation, death, or otherwise, the successor shall be appointed by the Governor or elected only for the remainder of the unexpired term.

    Ga. Const. Art. 5, § 2, ¶ 8
    O.C.G.A. § 45-5-3

20. In case of the death or withdrawal of a person who received the majority of votes cast in an election for the office of Secretary of State, Attorney General, State School Super-intendent, Commissioner of Insurance, Commissioner of Agriculture, or Commissioner of Labor, the Governor elected at the same election, upon becoming Governor, shall have the power to fill such office by appointing, subject to confirmation of the Senate, an individual to serve until the next general election and until a successor for the balance of the unexpired term shall have been elected and qualified.

    Ga. Const. Art. 5, § 2, ¶ 8

General Disqualifications

21. 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:

i. 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).

ii. 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).

iii. 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.

iv. *The conviction of the crime of "having liquor" does not render a person disquali-fied from holding public office if at the time of commission such crime carried only misdemeanor punishment. Op. Atty. Gen. 67-26.*

v. *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).*

vi. *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).*

vii. *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).*

viii. *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).*

ix. *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).*

x. *An indictment alone would not disqualify a person as a candidate for public office.Op. Atty.*

Gen. U68-102.

xi. *Where a potential candidate has been convicted of a felony involving moral turpi-tude, pardon or restoration of civil rights is necessary to hold any office or appoint-ment of honor or trust even if the sentence has been completed. Op. Atty. 83-33.*

xii. *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.*

xiii. *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.*

22. 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, the state constitution 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.

    Ga. Const. Art. 2, § 3, ¶¶ 1 and 2
    O.C.G.A. § 45-5-2

23. It is unlawful for the officers of the executive branch of the state government to accept or hold office or employment in the legislative or judicial branches of the state government.

    Ga. Const. Art. 1, § 2, ¶ 3
    O.C.G.A. § 16-10-9 (a) (3)

COMMISSIONER OF AGRICULTURE

Qualifications

1. Must have been a citizen of the United States for 10 years.
2. Must have been a legal resident of the state for four years immediately preceding the election or appointment.
3. Must have attained the age of 25 years by the date of assuming office.

   Ga. Const. Art. 5, § 3, ¶ 2

   Annotation:

   The word "election" as it appears in these provisions means the day votes are cast, not the day when they are finally tabulated and certified by the Secretary of State. Poythress v. Moses, 250 Ga. 452, 298 S.E. 2d 480 (1983).

4. Must be a practical farmer.

   O.C.G.A. § 2-2-2

Term of Office and Election

5. Elected for term of four years in the manner prescribed for the election of members of the General Assembly. Elected at the same time and for the same term as the Governor.

   Ga. Const. Art. 5, § 3, ¶ 1; Art. 5, § 1, ¶ 1
   O.C.G.A. § 2-2-3

6. Elected in general election held every four years on the Tuesday after the first Monday in November next preceding the expiration of the term of office, unless another date be fixed by the General Assembly.

   Ga. Const. Art. 5, § 3, ¶ 1; Art. 5, § 1, ¶ 2
   O.C.G.A. §§ 2-2-2, 21-2-9

   Annotation:

   It is settled in this state and in many other jurisdictions of this country that an election is absolutely void when not held in the proper time and place and by persons qualified to hold it. Davis v. Page, 217 Ga. 751, 125 S.E.2d 60 (1962).

7. A candidate for Commissioner of Agriculture 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:

   i. 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).

   ii. 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.

iii. *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 the ex-officio position held by the incumbent. Op. Atty. Gen. 70-53.*

iv. *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).*

8. In the event that a candidate pays his or her qualifying fee with a check that is subsequently returned for insufficient funds, the Secretary of State shall automatically find that such candidate has not met the qualifications for holding the office being sought, unless the bank, credit union, or other financial institution returning the check certifies in writing by an officer's or director's oath that the bank, credit union, or financial institution erred in returning the check.

   O.C.G.A. § 21-2-5 (d)

9. 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 elec-tion in the case of a general election or at least 20 or more days prior to a special election. In a state general or no later than seven days after the close of the special election qualifying period for a special election. In a general special election of county officers,
      i. notice must be filed with the Secretary of State and published in a paper of general circulation in the state 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
      ii. a copy of the notice as published and an affidavit that the notice has been published, including the name of the newspaper and date of publication, must be filed with the Secretary of State 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

10. 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, judge of superior court, district attorney, any elected county officer, and any elected municipal officer.

    O.C.G.A. § 21-2-136

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

O.C.G.A. § 21-2-7

Bond Requirements

11.
    a. candidate must give bond and security in the amount of $50,000 for faithful discharge of duties. Ga. Const. Art. 5, § 3, ¶ 2; O.C.G.A. § 2-2-5
    b. The bond must be filed in the office of the Governor within 40 days after the election or appointment. O.C.G.A § 45- 4-14
    c. 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
    d. The office of Commissioner of Agriculture must be vacated upon failure to give bond within the time prescribed by the laws and 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

12. The Georgia Constitution does not prescribe a specific oath of office for the Commissioner of Agriculture, but one may be prescribed by law. The U.S. Constitution requires that an oath be taken to support the U.S. Constitution.

    U.S. Const. Art. 6, cl. 3
    Ga. Const. Art. 5, § 3, ¶ 2

    Cross-Reference:
    Any public officer who willfully and intentionally violates the terms of his or her oath as prescribed by law shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than five years. O.C.G.A. §16-10-1.

13. 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.

14. 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:

i. *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.*
ii. *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

15. All elected or appointed offices are deemed vacant upon the incumbent's
    a. death or resignation;
    b. ceasing to be a resident of the state, county, or district from which elected;
    c. 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

16. In case of vacancy by death, resignation, or otherwise, the successor shall be appointed by the Governor or elected only for the remainder of the expired term.

    Ga. Const. Art. 5, § 2, ¶ 8
    O.C.G.A. § 45-5-3

17. In case of the death or withdrawal of a person who received the majority of votes cast in an election for the office of Secretary of State, Attorney General, State School Superintendent, Commissioner of Insurance, Commissioner of Agriculture, or Commissioner of Labor, the Governor elected at the same election, upon becoming Governor, shall have the power to fill such office by appointing, subject to confirmation of the Senate, an individual to serve until the next general election and until a successor for the balance of the unexpired term shall have been elected and qualified.

    Ga. Const. Art. 5, § 2, ¶ 8

General Disqualifications

18. 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:

i. *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).*
ii. *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).*
iii. *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.*
iv. *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.*
v. *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).

vi. *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).*

vii. *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).*

viii. *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).*

ix. *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).*

x. *An indictment alone would not disqualify a person as a candidate for public office.Op. Atty. Gen. U68-102.*

xi. *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.*

xii. *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.*

xiii. *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.

19. 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, the state constitution 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.

    Ga. Const. Art. 2, § 3, ¶¶ 1 and 2
    O.C.G.A. § 45-5-2

20. It is unlawful for the officers of the executive branch of the state government to accept or hold office or employment in the legislative or judicial branches of the state government.

    Ga. Const. Art. 1, § 2, ¶ 3
    O.C.G.A. § 16-10-9 (a) (3)

COMMISSIONER OF LABOR

Qualifications

1. Must have been a citizen of the United States for 10 years.
2. Must have been a legal resident of the state for four years immediately preceding the election or appointment.
3. Must have attained the age of 25 years by the date of assuming office.

Ga. Const. Art. 5, § 3, ¶ 2

Annotation:

The word "election" as it appears in these provisions means the day votes are cast, not the day when they are finally tabulated and certified by the Secretary of State. Poythress v. Moses, 250 Ga. 452, 298 S.E. 2d 480 (1983).

Note:
The Commissioner of Labor shall devote his or her full time to the duties of his or her office and shall not hold any other office during his or her term of office. See also, O.C.G.A. §34-2-3(a).

Term of Office and Election

4. Elected for term of four years in the manner prescribed for the election of members of the General Assembly. Elected at the same time and for the same term as the Governor.

Ga. Const. Art. 5, § 3, ¶ 1; Art. 5, § 1, ¶ 1
O.C.G.A. § 34-2-3 (b)

5. Elected in general election held every four years on the Tuesday after the first Monday in November next preceding the expiration of the term of office, unless another date be fixed by the General Assembly.

Ga. Const. Art. 5, § 3, ¶ 1; Art. 5, § 1, ¶ 2
O.C.G.A. § 21-2-9

Annotation:

It is settled in this state and in many other jurisdictions of this country that an election is absolutely void when not held in the proper time and place and by persons qualified to hold it. Davis v. Page, 217 Ga. 751, 125 S.E.2d 60 (1962).

6. A candidate for Commissioner of Labor must pay a qualification fee or file a pauper'saffidavit.

O.C.G.A. §§ 21-2-131, 21-2-132, 21-2-153

Annotations:

i. *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).*
ii. *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.*

iii. *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 the ex-officio position held by the incumbent. Op. Atty. Gen. 70-53.*

iv. *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).*

7. In the event that a candidate pays his or her qualifying fee with a check that is subsequently returned for insufficient funds, the Secretary of State shall automatically find that such candidate has not met the qualifications for holding the office being sought, unless the bank, credit union, or other financial institution returning the check certifies in writing by an officer's or director's oath that the bank, credit union, or financial institution erred in returning the check.

   O.C.G.A. § 21-2-5 (d)

8. 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 state general or no later than seven days after the close of the special election qualifying period for a special election. In a general special election of county officers,
      i. notice must be filed with the Secretary of State and published in a paper of general circulation in the state 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
      ii. a copy of the notice as published and an affidavit that the notice has been published, including the name of the newspaper and date of publication, must be filed with the Secretary of State 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

9. 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, judge of superior court, district attorney, any elected county officer, and any elected municipal officer.

   O.C.G.A. § 21-2-136

10. No person shall be nominated or elected who has been adjudged a "subversive person," as defined in

the Sedition and Subversive Activities Act of 1953.

O.C.G.A. § 21-2-7

Bond Requirements

11.
    a. candidate must give bond and security for faithful discharge of duties. Ga. Const. Art. 5, § 3, ¶ 2
    b. The bond must be filed in the office of the Governor within 40 days after the election or appointment. O.C.G.A § 45- 4-14
    c. 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
    d. The office of Commissioner of Labor must be vacated upon failure to give bond within the time prescribed by the laws and 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

12. The Georgia Constitution does not prescribe a specific oath of office for the Commissioner of Labor, but one may be prescribed by law. The U.S. Constitution requires that an oath be taken to support the U.S. Constitution.

    Ga. Const. Art. 5, § 3, ¶ 2
    U.S. Const. Art. 6, cl. 3

13. 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

    Cross-Reference:
    Any public officer who willfully and intentionally violates the terms of his or her oath as prescribed by law shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than five years. O.C.G.A. § 16 -10-1.

    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.

14. 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:

i. *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.*

ii. *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

15. All elected or appointed offices are deemed vacant upon the incumbent's
    a. death or resignation;
    b. ceasing to be a resident of the state, county, or district from which elected;
    c. 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

16. In case of vacancy by death, resignation, or otherwise, the successor shall be appointed by the Governor or elected only for the remainder of the expired term.

    Ga. Const. Art. 5, § 2, ¶ 8
    O.C.G.A. § 45-5-3

17. In case of the death or withdrawal of a person who received the majority of votes cast in an election for the office of Secretary of State, Attorney General, State School Superintendent, Commissioner of Insurance, Commissioner of Agriculture, or Commissioner of Labor, the Governor elected at the same election, upon becoming Governor, shall have the power to fill such office by appointing, subject to confirmation of the Senate, an individual to serve until the next general election and until a successor for the balance of the unexpired term shall have been elected and qualified.

    Ga. Const. Art. 5, § 2, ¶ 8

    Annotation:

    When a vacancy occurs during the first two years of the term of office, the individual appointed to serve as Commissioner of Labor shall serve only until a special election can be held to fill the balance of the term. The special election will be held to coincide with the next general election, and the State Elections Division is authorized, but not required, to call a special primary. Op. Atty. Gen. 92-11.

General Disqualifications

18. 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:

i. *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).*
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iv. *The conviction of the crime of "having liquor" does not render a person disquali-fied from holding public office if at the time of commission such crime carried only misdemeanor punishment. Op. Atty. Gen. 67-26.*
v. *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).

vi. *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).*

vii. *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).*

viii. *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).*

ix. *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).*

x. *An indictment alone would not disqualify a person as a candidate for public office.Op. Atty. Gen. U68-102.*

xi. *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.*

xii. *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.

xiii. *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.*

19. 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, the state constitution 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.

    Ga. Const. Art. 2, § 3, ¶¶ 1 and 2
    O.C.G.A. § 45-5-2

20. It is unlawful for the officers of the executive branch of the state government to accept or hold office or employment in the legislative or judicial branches of the state government.

    Ga. Const. Art. 1, § 2, ¶ 3
    O.C.G.A. § 16-10-9 (a) (3)

COMMISSIONER OF INSURANCE

Qualifications

1. Must have been a citizen of the United States for 10 years.
2. Must have been a legal resident of the state for four years immediately preceding the election or appointment.
3. Must have attained the age of 25 years by the date of assuming office.

   Ga. Const. Art. 5, § 3, ¶ 2

   Annotation:

   The word "election" as it appears in these provisions means the day votes are cast, not the day when they are finally tabulated and certified by the Secretary of State. Poythress v. Moses, 250 Ga. 452, 298 S.E. 2d 480 (1983).

Term of Office and Election

4. Elected for term of four years in the manner prescribed for the election of members of the General Assembly. Elected at the same time and for the same term as the Governor.

   Ga. Const. Art. 5, § 3, ¶ 1; Art. 5, § 1, ¶ 1
   O.C.G.A. § 45-14-1

5. Elected in general election held every four years on the Tuesday after the first Monday in November next preceding the expiration of the term of office, unless another date be fixed by the General Assembly.

   Ga. Const. Art. 5, § 3, ¶ 1; Art. 5, § 1, ¶ 2
   O.C.G.A. § 21-2-9

   Annotation:

   It is settled in this state and in many other jurisdictions of this country that an election is absolutely void when not held in the proper time and place and by persons qualified to hold it. Davis v. Page, 217 Ga. 751, 125 S.E.2d 60 (1962).

6. A candidate for Commissioner of Insurance must pay a qualification fee or file a pauper'saffidavit.

   O.C.G.A. §§ 21-2-131, 21-2-132, 21-2-153

   Annotations:

   i. *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).*
   ii. *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.*
   iii. *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 the ex-officio position held by the incumbent. Op. Atty. Gen. 70-53.*
   iv. *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).

7. In the event that a candidate pays his or her qualifying fee with a check that is subsequently returned for insufficient funds, the Secretary of State shall automatically find that such candidate has not met the qualifications for holding the office being sought, unless the bank, credit union, or other financial institution returning the check certifies in writing by an officer's or director's oath that the bank, credit union, or financial institution erred in returning the check.

   O.C.G.A. § 21-2-5 (d)

8.
   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 state general or special election,
      i. notice must be filed with the Secretary of State and published in a paper of general circulation in the state 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
      ii. a copy of the notice as published and an affidavit that the notice has been published, including the name of the newspaper and date of publication, must be filed with the Secretary of State 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

9. 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, judge of superior court, district attorney, any elected county officer, and any elected municipal officer.

   O.C.G.A. § 21-2-136

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

    O.C.G.A. § 21-2-7

Bond Requirements

11.
    a) candidate must give bond and security in the amount of $20,000 for faithful discharge of duties. Ga. Const. Art. 5, § 3, ¶ 2, O.C.G.A. § 45-14-2
    b) The bond must be filed in the office of the Governor within 40 days after the election or appointment. O.C.G.A § 45- 4-14
    c) 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
    d) The office of Commissioner of Insurance must be vacated upon failure to give bond within the time prescribed by the laws and 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

12. The Georgia Constitution does not prescribe a specific oath of office for the Commissioner of Insurance. The U.S. Constitution requires that an oath be taken to support the U.S. Constitution.

    U.S. Const. Art. 6, cl. 3
    Ga. Const. Art. 5, § 3, ¶ 2

13. 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

    Cross-Reference:
    Any public officer who willfully and intentionally violates the terms of his or her oath as prescribed by law shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than five years. O.C.G.A. § 16 -10-1.

    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.

14. 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:
    i. 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.

ii. 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

15. All elected or appointed offices are deemed vacant upon the incumbent's
    a) death or resignation;
    b) ceasing to be a resident of the state, county, or district from which elected;
    c) 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

16. In case of vacancy by death, resignation, or otherwise, the successor shall be appointed by the Governor or elected only for the remainder of the expired term.

    Ga. Const. Art. 5, § 2, ¶ 8
    O.C.G.A. § 45-5-3

17. In case of the death or withdrawal of a person who received the majority of votes cast in an election for the office of Secretary of State, Attorney General, State School Superintendent, Commissioner of Insurance, Commissioner of Agriculture, or Commissioner of Labor, the Governor elected at the same election, upon becoming Governor, shall have the power to fill such office by appointing, subject to confirmation of the Senate, an individual to serve until the next general election and until a successor for the balance of the unexpired term shall have been elected and qualified.

    Ga. Const. Art. 5, § 2, ¶ 8

General Disqualifications

18. 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:

i. *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).*
ii. *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).*
iii. *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.*
iv. *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.*
v. *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).

vi. *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).*

vii. *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. Eligi-bility 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).*

viii. *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).*

ix. *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).*

x. *An indictment alone would not disqualify a person as a candidate for public office.Op. Atty. Gen. U68-102.*

xi. *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.*

xii. *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.*

xiii. *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.*

19. Suspension and removal from office upon felony indictment and 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, the state constitution 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.

Ga. Const. Art. 2, § 3, ¶¶ 1 and 2
O.C.G.A. § 45-5-2

20. It is unlawful for the officers of the executive branch of the state government to accept or hold office or employment in the legislative or judicial branches of the state government.

Ga. Const. Art. 1, § 2, ¶ 3
O.C.G.A. § 16-10-9 (a) (3)

PUBLIC SERVICE COMMISSIONER

Qualifications

1. Must be at least 30 years of age.
2. Must be qualified to vote as an elector, be a citizen of the United States, and a resident and citizen of Georgia.
3. Commissioners must not be directly or indirectly interested in any mercantile business or any corporation that is controlled by or that participates in the benefit of any pool, combination, trust, contract, or arrangement that has the effect of increasing or tending to increase the cost to the public of carriage, heat, light, power, or of any commodity or merchandise sold to the public. A person is eligible for membership on the Commission without regard to his or her experience in law or in the utility or transportation business.
4. During their terms of office, the Commissioners must not, jointly or severally or in any way, be the holders of any stock or bonds, or be agents or employees of any company, or have any interest in any company under the jurisdiction of the Commission. If any Commissioner becomes disqualified in any way, he or she must at once remove the disqualification or resign, and on failure to do so must be suspended from office by the Governor.

   Ga. Const. Art. 4, § 7, ¶ 1
   O.C.G.A. § 46-2-2

   Annotation:
   A member of the Public Service Commission may not at the same time serve as a member of a county governing authority. Op. Atty. Gen. 78-32.

5. In order to be elected as a member of the Commission from a Public Service Commission District, a person must have resided in that district for at least 12 months prior to election thereto and must continue to reside in that district during that person's term of office.

   O.C.G.A. § 46-2-1(b)

   Cross-Reference:
   The Public Service Commission is established in the Georgia Constitution. See Ga. Const. Art. 4, § 1, ¶ 1

Term of Office and Election

6. The members in office on January 1, 2000, and any member elected or appointed to fill a vacancy prior to the expiration of a term of office shall continue to serve out their respective terms of office. As terms of office expire, new members elected to the Commission shall be required to be residents of one of the five Public Service Commission Districts. Commissioners serve until their successors are elected and qualified.
7. The Commissioners shall give their entire time to the duties of their offices.
8. Term of office is six years and expires on December 31. Commissioners are elected at the general election preceding the expiration of the term of office of the respective incumbents.
9. Each member of the Commission shall be elected statewide by the qualified voters of this state who are entitled to vote for the General Assembly.
10. Elections are held under the same rules and regulations as apply to the election of Governor.

Ga. Const. Art. 4, § 1, ¶ 1 (a) and (c)
O.C.G.A. § 46-2-1

11. A candidate for Public Service Commissioner must pay a qualification fee or file apauper's affidavit.

    O.C.G.A §§ 21-2-131, 21-2-132, 21-2-153

    Annotations:

    i. *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).*
    ii. *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.*
    iii. *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 the ex-officio position held by the incumbent. Op. Atty. Gen. 70-53.*
    iv. *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).*

12. In the event that a candidate pays his or her qualifying fee with a check that is subsequently returned for insufficient funds, the Secretary of State shall automatically find that such candidate has not met the qualifications for holding the office being sought, unless the bank, credit union, or other financial institution returning the check certifies in writing by an officer's or director's oath that the bank, credit union, or financial institution erred in returning the check.

    O.C.G.A. § 21-2-5 (d)

13. 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 state general or no later than seven days after the close of the special election qualifying period for a special election. In a general special election of county officers,
        i. notice must be filed with the Secretary of State and published in a paper of general circulation in the state 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
        ii. a copy of the notice as published and an affidavit that the notice has been published, including the name of the newspaper and date of publication, must be filed with the Secretary of State 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

14. 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, judge of superior court, district attorney, any elected county officer, and any elected municipal officer.

    O.C.G.A. § 21-2-136

15. No person shall be nominated or elected who has been adjudged a "subversive person," as defined in the Sedition and Subversive Activities Act of 1953.
    O.C.G.A § 21-2-7

Oath of Office

16. The Georgia Constitution does not prescribe specific language for the Public Service Commissioner's oath of office. Instead, the law provides that the Commissioners shall take an oath of office, the wording of which to be determined by the Governor.

    O.C.G.A. § 46-2-3

    Note:
    The federal constitution requires that the Public Service Commissioner be bound by oath or affirmation to support the federal constitution. See U.S. Const., Art. 6, cl. 3.

17. 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.

    Cross-Reference:
    Any public officer who willfully and intentionally violates the terms of his or her oath as prescribed by law shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than five years. O.C.G.A. § 16 -10-1.

18. 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:

i. *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.*

ii. *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 Successors to Office

19. All elected or appointed offices are deemed vacant upon the incumbent's
    a) death or resignation;
    b) ceasing to be a resident of the state, county, or district from which elected;
    c) 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

20. Any vacancy in the Commission is filled by the Governor. Any person appointed shall hold his or her office until the next regular general election and until his or her successor for the balance of the unexpired term has been elected and has qualified.

    Ga. Const. Art. 4, § 1, ¶ 1 (c)
    O.C.G.A. § 46-2- 4

General Disqualifications

21. 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:

i. *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).*
ii. *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).*
iii. *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.*
iv. *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.*
v. *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).

vi. *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).*

vii. *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).*

viii. *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).*

ix. *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).*

x. *An indictment alone would not disqualify a person as a candidate for public office.Op. Atty. Gen. U68-102.*

xi. *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.*

xii. *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.*

xiii. *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.*

22. 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.

Ga. Const. Art. 2, § 3, ¶ 2
O.C.G.A. § 45-5-6

Annotation:

When a public official's initial conviction is set aside on appeal and a new trial ordered, that official is entitled to have his or her salary resumed and receive back compensation. Op. Atty. Gen. U91-14.

23. It is unlawful for the officers of the executive branch of the state government to accept or hold office or employment in the legislative or judicial branches of the state government.

O.C.G.A. § 16-10-9(a)(3)
Ga. Const. Art. 1, § 2, ¶ 3

PRESIDENTIAL ELECTOR

Qualifications

1. Neither the state constitution nor laws establish any specific qualifications for this office. Since presidential electors are state officials, the general qualifications established for state officials apply as follows:
    a) Must be a citizen of the state.
    b) Must be at least 21 years of age.

    O.C.G.A. § 45-2-1

Appointment and Election

2. Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the state may be entitled to in the Congress; but no Senator or Representative or person holding an office of trust or profit under the United States shall be appointed an elector.

    U.S. Const. Art. 2, § 1, cl. 2
    O.C.G.A. § 21-2-10

3. Elected by the electors of the state at the general election held on the Tuesday after the first Monday in November in every presidential election year.

    U.S. Const. Art. 2, § 1, cl. 2
    O.C.G.A § 21-2-10

4. The names of the nominees of political parties nominated in a primary, the names of the nominees of political parties for the office of presidential elector, and the names of candidates nominated in a nonpartisan primary shall be placed on the election ballot without their filing the notice of candidacy otherwise required by this code section.

    O.C.G.A. § 21-2-132 (a)

5. 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 state general or no later than seven days after the close of the special election qualifying period for a special election. In a general special election of county officers,
        i. notice must be filed with the Secretary of State and published in a paper of general circulation in the state 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

ii. a copy of the notice as published and an affidavit that the notice has been published, including the name of the newspaper and date of publication, must be filed with the Secretary of State 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

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

O.C.G.A § 21-2-7

7. If any such presidential elector shall die, or for any cause fail to attend at the seat of government at the time appointed by law, the presidential electors present shall proceed to choose by voice vote a person of the same political party or body, if any, as such deceased or absent presidential elector, to fill the vacancy.

O.C.G.A. § 21-2-12

Oath of Office

8. 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

Cross-Reference:
Any public officer who willfully and intentionally violates the terms of his or her oath as prescribed by law shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than five years. O.C.G.A. §16-10-1.

Note:
The official acts of an officer are valid regardless of his or her omission to take and file an oath, except in cases where so specially declared. See O.C.G.A. § 45-3-10.

9. 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:

i. 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.

ii. *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.*

General Disqualifications

10. 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:

i. *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).

ii. *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).*

iii. *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.*

iv. *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.*

v. *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) (un-lawfully 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).*

vi. *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).*

vii. *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).*

viii. *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).

ix. *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).*

x. *An indictment alone would not disqualify a person as a candidate for public office. Op. Atty. Gen. U68-102.*

xi. *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.*

xii. *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.*

xiii. *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.*

STATE SENATOR

Qualifications

1. Must be a citizen of the United States.
2. Must be at least 25 years of age.
3. Must have been a citizen of Georgia for at least two years.
4. Must be a resident of the district which he or she represents, and at the time of his or her election must have been a resident of the territory embraced within such district for at least one year preceding such time. Must be elected only by the voters of his or her senatorial district.

   Ga. Const. Art. 3, § 2, ¶ 3 (a)
   O.C.G.A. § 28-2-2 (b)

   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 avowed 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).

Term of Office and Election

5. Elected by the qualified electors of their respective districts for a term of two years and shall serve until the time fixed for the convening of the next General Assembly.
6. Members are elected biennially (every 2 years) in the general election held on the Tuesday following the first Monday in November next preceding the expiration of the term of the office, until the date of election is changed by law.

   Ga. Const. Art. 3, § 2, ¶ 5
   O.C.G.A. § 21-2-9

   Annotation:
   It is settled in this state and in many other jurisdictions of this country that an election is absolutely void when not held in the proper time and place and by persons qualified to hold it. Davis v. Page, 217 Ga. 751, 125 S.E.2d 60 (1962).

7. A candidate for state Senator 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:
   i. *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).*
   ii. *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.*
   iii. *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 the ex-officio position held by the incumbent. Op. Atty. Gen. 70-53.

iv. 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).

8. In the event that a candidate pays his or her qualifying fee with a check that is subsequently returned for insufficient funds, the Secretary of State shall automatically find that such candidate has not met the qualifications for holding the office being sought, unless the bank, credit union, or other financial institution returning the check certifies in writing by an officer's or director's oath that the bank, credit union, or financial institution erred in returning the check.

   O.C.G.A. § 21-2-5 (d)

9. 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 state general or no later than seven days after the close of the special election qualifying period for a special election. In a general special election of county officers,
      i. notice must be filed with the Secretary of State and published in a paper of general circulation in the state 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
      ii. a copy of the notice as published and an affidavit that the notice has been published, including the name of the newspaper and date of publication, must be filed with the Secretary of State 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

10. 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, judge of superior court, district attorney, any elected county officer, and any elected municipal officer.

    O.C.G.A. § 21-2-136

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

    O.C.G.A. § 21-2-7

Oath of Office

12. Each Senator, before taking his or her seat, shall take the following oath:

    "I do hereby solemnly swear or affirm that I will support the Constitution of this state and of the United States, and on all questions and measures which may come before me, I will so conduct myself, as will, in my judgment, be most conducive to the interests and prosperity of this state."

    Ga. Const. Art. 3, § 4, ¶ 2
    O.C.G.A. § 28-1- 4

    Cross-Reference:
    Any public officer who willfully and intentionally violates the terms of his or her oath as prescribed by law shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than five years. O.C.G.A. § 16 -10-1.

    Annotation:
    A state legislator can be required to swear to support the U.S. Constitution as a condition of holding office. Bond v. Floyd, 385 U.S. 116, 87 S.Ct. 339 (1966).

13. 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

    Notes:
    a) The federal constitution requires that a state Senator be bound by oath or affirmation to support the federal constitution. See U.S. Constitution Art. 6, § 3.
    b) 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.

14. 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:
    i. 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.
    ii. 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

15. All elected or appointed offices are deemed vacant upon the incumbent's
    a) death or resignation;
    b) ceasing to be a resident of the state, county, or district from which elected;
    c) 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

16. The seat of a member of the Senate shall be vacant when such member moves his or her legal residence from the district from which elected.

    Ga. Const. Art. 3, § 4, ¶ 5

17. The Governor shall issue writs of election to fill all vacancies that may occur in the Senate.

    Ga. Const. Art. 5, § 2, ¶ 5; Art. 3, § 4, ¶ 5
    O.C.G.A. § 21-2-544

General Disqualifications

18. 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:

i. *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).*

ii. *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).*

iii. *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.*

iv. *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.*

v. *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).

vi. *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).*

vii. *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).*

viii. *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).*

ix. *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).*

x. *An indictment alone would not disqualify a person as a candidate for public office.Op. Atty. Gen. U68-102.*

xi. *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.*

xii. *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.*

xiii. *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.*

19. 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, the state constitution 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.

    Ga. Const. Art. 2, § 3, ¶¶ 1 and 2
    O.C.G.A. § 45-5-2

20. Other Disqualifications:

a) Must not be on active duty with any branch of the armed forces of the United States unless otherwise provided by law.
b) Must not be holding any civil appointment or office having any emolument annexed thereto under the United States, Georgia, or any other state.
c) Must not be elected by the General Assembly or appointed by the Governor to any office or appointment having any emolument annexed thereto during the time for which such person is elected, unless he or she first resigns the seat. During the term for which elected, a Senator cannot be appointed to any civil office which has been created during such term.

Ga. Const. Art. 3, § 2, ¶ 4

Annotations:

i. 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 as an individual to bring a quo warranto action claiming that a public official is ineligible to hold office. Highsmith v. Clark, 245 Ga. 158, 264 S.E.2d 1 (1980).

ii. A member of the General Assembly cannot serve simultaneously as a juvenile court judge. Op. Atty. Gen. U84- 46.

iii. There is no per se conflict of interest if a member of the General Assembly also serves as either a city or county attorney, or performs contract work for a city or county within that legislator's district. Opp. Atty. Gen. U84-34.

iv. A member of the General Assembly or his or her law firm may serve as city attorney when such representation includes service as solicitor of the municipal court.
But a conflict of interest could occur if a partner of a legislator's law firm acts as a registered agent on behalf of the firm's clients if the legislator receives a pecuniary benefit from such activity. Op. Atty. Gen. U91- 4.

v. There is no per se conflict of interest for an attorney who serves in the General Assembly to represent and provide legal services to a community services board as defined in O.C.G.A. § 37-2-11.1(c)(1) with respect to general matters as well as in conjunction with employee disciplinary proceedings, as long as the legislator, in his or her capacity as the board's legal representative, does not take any adverse action against the state or any of its agencies. Op. Atty Gen. U95-26.

21. No elected county or municipal official shall be eligible to serve as a member of the General Assembly.

O.C.G.A. § 28-1-13

22. It is unlawful for a member of the General Assembly to accept or hold office or employment in the executive branch of the government, or any agency thereof, or in the judicial branch of the state government.
Ga. Const. Art. 1, § 2, ¶ 3

O.C.G.A. § 16-10-9 (a) (1)

Annotations:

i. A member of the General Assembly cannot hold employment as a faculty member of a member institution of the University System of Georgia. Op. Atty. Gen. 76-117.

ii. There is no prohibition against a member of the General Assembly being an employee of the county or city board of education. Op. Atty. Gen. 77- 47.

iii. The Supreme Court of Georgia upheld the constitutionality of the provision in Galer v. Bd. of

Regents of the Univ. System, 239 Ga. 268, 236 S.E.2d 617 (1977).

MEMBER, STATE HOUSE OF REPRESENTATIVES

Qualifications

1. Must be a citizen of the United States.
2. Must be at least 21 years of age.
3. Must have been a citizen of Georgia for at least two years.
4. Must be a resident of the district which he or she represents, and at the time of his or her election must have been a resident of the territory embraced within such district for at least one year preceding such time. Must be elected only by the voters of his or her representative district.

   Ga. Const. Art. 3, § 2, ¶ 3(b)
   O.C.G.A. § 28-2-1 (b)

   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 avowed 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).

Term of Office and Election

5. Elected by the qualified electors of their respective districts for a term of two years and shall serve until the time fixed for the convening of the next General Assembly.
6. Members are elected biennially (every 2 years) in the general election held on the Tuesday following the first Monday in November next preceding the expiration of the term of office, until the date of election is changed by law.

   Ga. Const. Art. 3, § 2, ¶ 5
   O.C.G.A. § 21-2-9

   Annotation:
   It is settled in this state and in many other jurisdictions of this country that an election is absolutely void when not held in the proper time and place and by persons qualified to hold it. Davis v. Page, 217 Ga. 751, 125 S.E.2d 60 (1962).

7. A candidate for Representative 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:
   i. 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).
   ii. 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.
   iii. 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 the ex-officio position held by the incumbent. Op. Atty. Gen. 70-53.

iv. *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).*

8. In the event that a candidate pays his or her qualifying fee with a check that is subsequently returned for insufficient funds, the Secretary of State shall automatically find that such candidate has not met the qualifications for holding the office being sought, unless the bank, credit union, or other financial institution returning the check certifies in writing by an officer's or director's oath that the bank, credit union, or financial institution erred in returning the check.

   O.C.G.A. § 21-2-5 (d)

9. 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 state general or no later than seven days after the close of the special election qualifying period for a special election. In a general special election of county officers,
      i. notice must be filed with the Secretary of State and published in a paper of general circulation in the state by the person giving notice of intention to be a writein candidate or by some other person or group of persons qualified to vote in the subject election; and
      ii. a copy of the notice as published and an affidavit that the notice has been pub lished, including the name of the newspaper and date of publication, must be filed with the Secretary of State 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

10. 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, judge of superior court, district attorney, any elected county officer, and any elected municipal officer.

    O.C.G.A. § 21-2-136

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

O.C.G.A. § 21-2-7

Oath of Office

12. Each Representative, before taking his or her seat, shall take the following oath:
"I do hereby solemnly swear or affirm that I will support the Constitution of this state and of the United States, and on all questions and measures which may come before me, I will so conduct myself, as will, in my judgment, be most conducive to the interests and prosperity of this state."

    Ga. Const. Art. 3, § 4, ¶ 2
    O.C.G.A. § 28-1- 4

    Cross-Reference:
    Any public officer who willfully and intentionally violates the terms of his or her oath as prescribed by law shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than five years. O.C.G.A. § 16 -10-1.

    Annotation:
    A state legislator can be required to swear to support the U.S. Constitution as a condition of holding office. Bond v. Floyd, 385 U.S. 116, 87 S.Ct. 339 (1966).

13. 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 is not the holder of any unaccounted for public money due this state; 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; is otherwise qualified to hold said office according to the constitution and laws of Georgia; and will support the constitutions of the United States and of this state.

    O.C.G.A. § 45-3-1

    Notes:
    a) The federal constitution requires that a state Representative be bound by oath or affirmation to support the federal constitution. See U.S. Constitution Art. 6, § 3.
    b) 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.

14. 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:
    i. 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.
    ii. 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

15. All elected or appointed offices are deemed vacant upon the incumbent's
    a) death or resignation;
    b) ceasing to be a resident of the state, county, or district from which elected;
    c) 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

16. The seat of a member of the House of Representatives shall be vacant when such member moves his or her legal residence from the district from which elected.

    Ga. Const. Art. 3, § 4, ¶ 5

17. The Governor shall issue writs of election to fill all vacancies that may occur in the House of Representatives.

    Ga. Const. Art. 5, § 2, ¶ 5; Art. 3, § 4, ¶ 5
    O.C.G.A. § 21-2-544

General Disqualifications

18. 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:

i. *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).*
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iii. *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.*
iv. *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.*
v. *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. 30, 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).

vi. *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).*

vii. *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).*

viii. *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).*

ix. *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).*

x. *An indictment alone would not disqualify a person as a candidate for public office.Op. Atty. Gen. U68-102.*

xi. *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 appoint-ment of honor or trust even if the sentence has been completed. Op. Atty. 83-33.*

xii. *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.*

xiii. *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.*

19. 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, the state constitution 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.

    Ga. Const. Art. 2, § 3, ¶¶ 1 and 2
    O.C.G.A. § 45-5-2

20. Other Disqualifications:
    a) Must not be on active duty with any branch of the armed forces of the United States unless

otherwise provided by law.

b) Must not be holding any civil appointment or office having any emolument annexed thereto under the United States, Georgia, or any other state.

c) Must not be elected by the General Assembly or appointed by the Governor to any office or appointment having any emolument annexed thereto during the time for which such person is elected, unless he or she first resigns the seat. During the term for which elected, a Representative cannot be appointed to any civil office which has been created during such term.

Ga. Const. Art. 3, § 2, ¶ 4

Annotations:

i. *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 as an individual to bring a quo warranto action claiming that a public of-ficial is ineligible to hold office. Highsmith v. Clark, 245 Ga. 158, 264 S.E.2d 1 (1980).*

ii. *A member of the General Assembly cannot serve simultaneously as a juvenile court judge. Op. Atty. Gen. U84- 46.*

iii. *There is no per se conflict of interest if a member of the General Assembly also serves as either a city or county attorney, or performs contract work for a city or county within that legislator's district. Opp. Atty. Gen. U84-34.*

iv. *A member of the General Assembly or his or her law firm may serve as city attorney when such representation includes service as solicitor of the municipal court. But a conflict of interest could occur if a partner of a legislator's law firm acts as a registered agent on behalf of the firm's clients if the legislator receives a pecuniary benefit from such activity. Op. Atty. Gen. U91- 4.*

v. *There is no per se conflict of interest for an attorney who serves in the General Assembly to represent and provide legal services to a community services board as defined in O.C.G.A. § 37-2-11.1(c)(1) with respect to general matters as well as in conjunction with employee disciplinary proceedings, as long as the legislator, in his or her capacity as the board's legal representative, does not take any adverse action against the state or any of its agencies. Op. Atty. Gen. U95-26.*

21. No elected county or municipal official shall be eligible to serve as a member of the General Assembly.

O.C.G.A. § 28-1-13

22. It is unlawful for a member of the General Assembly to accept or hold office or employment in the executive branch of the government, or any agency thereof, or in the judicial branch of the state government.

O.C.G.A. § 16-10-9 (a) (1)
Ga. Const. Art. 1, § 2, ¶ 3

Annotations:

i. *A member of the General Assembly cannot hold employment as a faculty member of a member institution of the University System of Georgia. Op. Atty. Gen. 76-117.*

ii. *There is no prohibition against a member of the General Assembly being an employee of the county or city board of education. Op. Atty. Gen. 77- 47.*

iii. *The Supreme Court of Georgia upheld the constitutionality of the provision in Galer v. Bd. of*

Regents of the Univ. System, 239 Ga. 268, 236 S.E.2d 617 (1977).

JUSTICE OF SUPREME COURT

Qualifications

1. Must have been admitted to practice law for seven years.

   Ga. Const. Art. 6, § 7, ¶ 2 (a)

2. The General Assembly may provide by law for additional qualifications, including, but not limited to, minimum residency requirements.

   Ga. Const. Art. 6, § 7, ¶ 2 (e)

Annotation:

An individual must be a member of the State Bar of Georgia in order to be qualified to run for office as a Justice of the Supreme Court of Georgia. Littlejohn v. Cleveland, 251 Ga. 597, 308 S.E.2d 186 (1983).

Term of Office and Election

3. Elected on a nonpartisan basis for a term of six years. The term begins on January 1 afterthe election.

   Ga. Const. Art. 6, § 7, ¶ 1
   O.C.G.A. § 21-2-138

4. Elected in the general election held on the Tuesday following the first Monday in November in each even-numbered year next preceding the expiration of the term of office.

   O.C.G.A. § 21-2-9

Annotation:

It is settled in this state and in many other jurisdictions of this country that an election is absolutely void when not held in the proper time and place and by persons qualified to hold it. Davis v. Page, 217 Ga. 751, 125 S.E.2d 60 (1962).

5. A candidate for Justice of the Supreme 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:

i. *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).*
ii. *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.*
iii. *For the purposes of computing qualifying fee, only the salary which the law pro-vides for the office directly involved should be included and not the additional compensation paid for the ex-officio position held by the incumbent. Op. Atty. Gen. 70-53.*
iv. *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).

6. In the event that a candidate pays his or her qualifying fee with a check that is subsequently returned for insufficient funds, the Secretary of State shall automatically find that such candidate has not met the qualifications for holding the office being sought, unless the bank, credit union, or other financial institution returning the check certifies in writing by an officer's or director's oath that the bank, credit union, or financial institution erred in returning the check.

   O.C.G.A. § 21-2-5 (d)

7. 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 state general or no later than seven days after the close of the special election qualifying period for a special election. In a general special election of county officers,
      i. notice must be filed with the Secretary of State and published in a paper of general circulation in the state 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
      ii. a copy of the notice as published and an affidavit that the notice has been published, including the name of the newspaper and date of publication, must be filed with the Secretary of State 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

8. 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, judge of superior court, district attorney, any elected county officer, and any elected municipal officer.

   O.C.G.A. § 21-2-136

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

   O.C.G.A § 21-2-7

Oath of Office

10. Before entering on the discharge of their duties, the Justices are required to take the following oath prescribed for the judges of the superior courts:

    "I swear that I will administer justice without respect to person and do equal rights to the poor and the rich and that I will faithfully and impartially discharge and perform all the duties incumbent on me as Justice of the Supreme Court of this state, according to the best of my ability and understanding, and agreeably to the laws and Constitution of this state and the Constitution of the United States. So help me God."

    O.C.G.A. §§ 15-2-3 (a), 15-6-6

    Note:
    The federal constitution requires that the judicial officers of the state be bound by oath or affirmation to support the federal constitution. See U.S. Const. Art. 6, § 3.

11. 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. §§ 15-2-3(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.

12. 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:
    i. 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.
    ii. 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

13. Any judge may be removed, suspended, or otherwise disciplined for

a) willful misconduct in office;
b) willful and persistent failure to perform the duties of office;
c) habitual intemperance;
d) conviction of a crime involving moral turpitude; or
e) conduct prejudicial to the administration of justice which brings the judicial office into disrespect.

Any judge may be retired for disability which constitutes a serious and likely permanent interference with the performance of the duties of office. The Supreme Court shall adopt rules of implementation.

Ga. Const. Art. 6, § 7, ¶ 7

Annotation:

The Supreme Court possesses the authority to regulate the conduct of judges—including conduct during judicial elections. Judicial Qualifications Commission v. Lowenstein, 252 Ga. 432, 314 S.E.2d 107 (1984).

14. In case of vacancy by resignation, death, or otherwise, the vacancy shall be filled by appointment of the Governor. The appointee shall serve until a successor is duly selected and qualified and until January 1 of the year following the next general election which is more than six months after such person's appointment.

Ga. Const. Art. 6, § 7, ¶ 3 and ¶ 4; Art. 5, § 2, ¶ 8 (a)
O.C.G.A. § 45-5-3

Annotation:

When the Governor appoints to fill a vacancy on the Supreme Court, the appointee must stand for reelection in the nonpartisan judicial primary and also during the next general election in November which is more than six months after their appointment. Op. Atty. Gen. U92-7.

General Disqualifications

15. 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:

i. *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).*
ii. *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).*
iii. *A convicted felon who has had his or her civil rights restored is eligible to vote andhold public office. Op. Atty. Gen. U77- 43.*
iv. *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.*
v. *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).

vi. *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).*

vii. *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).*

viii. *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).*

ix. *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).*

x. *An indictment alone would not disqualify a person as a candidate for public office.Op. Atty. Gen. U68-102.*

xi. *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.*

xii. *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.*

xiii. *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.*

16. Suspension and removal from office upon felony indictment or conviction:

a) Upon indictment for a felony by a grand jury of this state or of the United States, which felony relates to and adversely affects the administration of justice, the state constitution provides a means by which the indicted judge may be suspended, with pay, pending the final disposition of the case or the expiration of the judge'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 judge 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.

Ga. Const. Art. 6, § 7, ¶ 7
O.C.G.A. § 45-5-2

17. It is unlawful for the Justices of the Supreme Court to accept or hold office or employment in the executive branch of the state government, or any agency thereof, or in the legislative branch of the state government.
    Ga. Const. Art. 1, § 2, ¶ 3
    O.C.G.A. § 16-10-9 (a) (2)

JUDGE OF COURT OF APPEALS

Qualifications

1. Must have been admitted to practice law for seven years.

   Ga. Const. Art. 6, § 7, ¶ 2 (a)

2. The General Assembly may provide by law for additional qualifications, including, but not limited to, minimum residency requirements.

   Ga. Const. Art. 6, § 7, ¶ 2 (e)

Term of Office and Election

3. Elected on a nonpartisan basis for a term of six years. The term begins on January 1 afterthe election.

   Ga. Const. Art. 6, § 7, ¶ 1
   O.C.G.A. §§ 15-3- 4, 21-2-138

4. The Judges are elected at the general state election to be held on the Tuesday after the first Monday in November of the even-numbered years next preceding the expiration of the term of office in the manner in which Justices of the Supreme Court are elected.

   O.C.G.A. §§ 15-3- 4, 21-2-9

   Annotation:

   It is settled in this state and in many other jurisdictions of this country that an election is absolutely void when not held in the proper time and place and by persons qualified to hold it. Davis v. Page, 217 Ga. 751, 125 S.E.2d 60 (1962).

5. A candidate for Judge of the Court of Appeals 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:

   i. *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).*
   ii. *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.*
   iii. *For the purposes 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 the ex-officio position held by the incumbent. Op. Atty. Gen. 70-53.*
   iv. *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).*

6. In the event that a candidate pays his or her qualifying fee with a check that is subsequently returned for insufficient funds, the Secretary of State shall automatically find that such candidate has not met the qualifications for holding the office being sought, unless the bank, credit union, or other financial institution returning the check certifies in writing by an officer's or director's oath that the bank, credit union, or financial institution erred in returning the check.

   O.C.G.A. § 21-2-5 (d)

7. 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 state general or no later than seven days after the close of the special election qualifying period for a special election. In a general special election of county officers,
      i. notice must be filed with the Secretary of State and published in a paper of general circulation in the state 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
      ii. a copy of the notice as published and an affidavit that the notice has been pub lished, including the name of the newspaper and date of publication, must be filed with the Secretary of State 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

8. 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, judge of superior court, district attorney, any elected county officer, and any elected municipal officer.

   O.C.G.A. § 21-2-136

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

   O.C.G.A § 21-2-7

Oath of Office

10. Before entering on the discharge of their duties, the Judges are required to take the following oath

prescribed for the judges of the superior courts:

"I swear that I will administer justice without respect to person and do equal rights to the poor and the rich and that I will faithfully and impartially discharge and perform all the duties incumbent on me as Judge of the Court of Appeals of this state, according to the best of my ability and understanding, and agreeably to the laws and Constitution of this state and the Constitution of the United States. So help me God."

O.C.G.A. §§ 15-3-5 (a), 15-6-6

Cross-Reference:
The federal constitution requires that the judicial officers of the state be bound by oath or affirmation to support the federal constitution. See U.S. Const. Art. 6, § 3.

11. 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. §§ 15-3-5(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.

    Cross-Reference:
    Any public officer who willfully and intentionally violates the terms of his or her oath as prescribed by law shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than five years. O.C.G.A. §16-10-1.

12. 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:
    i. 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.
    ii. 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

13. Any judge may be removed, suspended, or otherwise disciplined for
    a) willful misconduct in office;
    b) willful and persistent failure to perform the duties of office;
    c) habitual intemperance;
    d) conviction of a crime involving moral turpitude; or
    e) conduct prejudicial to the administration of justice which brings the judicial office into disrespect.

    Any judge may be retired for disability which constitutes a serious and likely permanent interference with the performance of the duties of office. The Supreme Court shall adopt rules of implementation.

    Ga. Const. Art. 6, § 7, ¶ 7

    Annotation:
    The Supreme Court possesses the authority to regulate the conduct of judges—including conduct during judicial elections. Judicial Qualifications Commission v. Lowenstein, 252 Ga. 432, 314 S.E.2d 107 (1984).

14. In case of vacancy by resignation, death, or otherwise, the vacancy shall be filled by appointent of the Governor. The appointee shall serve until a successor is duly selected and qualified and until January 1 of the year following the next general election which is more than six months after such person's appointment.

    Ga. Const. Art. 6, § 7, ¶ 3 and ¶ 4; Art. 5, § 2, ¶ 8 (a)
    O.C.G.A. § 45-5-3

General Disqualifications

15. 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 policymaking 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:

i. *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).*
ii. *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).*
iii. *A convicted felon who has had his or her civil rights restored is eligible to vote andhold public office. Op. Atty. Gen. U77- 43.*
iv. *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.*
v. *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).

vi. *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).*

vii. *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).*

viii. *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).*

ix. *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).*

x. *An indictment alone would not disqualify a person as a candidate for public office.Op. Atty. Gen. U68-102.*

xi. *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.*

xii. *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.*

xiii. *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.*

16. Suspension and removal from office upon felony indictment or conviction:
    a) Upon indictment for a felony by a grand jury of this state or of the United States, which felony relates to and adversely affects the administration of justice, the state constitution provides a means by which the indicted judge may be suspended, with pay, pending the final disposition of the case or the expiration of the judge'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 judge 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.

Ga. Const. Art. 6, § 7, ¶ 7
O.C.G.A. § 45-5-2

17. It is unlawful for the Judges of the Court of Appeals to accept or hold office or employment in the executive branch of the state government, or any agency thereof, or in the legislative branch of the state government.

    Ga. Const. Art. 1, § 2, ¶ 3
    O.C.G.A. § 16-10-9 (a) (2)

JUDGE OF SUPERIOR COURT

Qualifications

1. Must have attained the age of 30 years at the time of election.

   Ga. Const. Art. 6, § 7, ¶ 2 (e)
   O.C.G.A. § 15-6- 4

2. Must have been a citizen of the state for three years when elected.

   Ga. Const. Art. 6, § 7, ¶ 2 (e)
   O.C.G.A. § 15-6- 4

3. Must, when elected, have practiced law for seven years and must have been duly reinstated to the practice of law in the event of disbarment therefrom.

   Ga. Const. Art. 6, § 7, ¶ 2 (a) and (e)
   O.C.G.A. § 15-6- 4

   Annotation:
   A person running for the office of judge of superior court must meet the seven-year practice of law requirement by the date of his or her election to office. Op. Atty. Gen. 81-64.

4. Must reside in the geographical area in which selected to serve.

   Ga. Const. Art. 6, § 7, ¶ 2 (d)

5. Must be elected by the electors of the judicial circuit in which the judge is to serve.

   O.C.G.A. § 15-6- 4.1

Term of Office and Election

6. Elected circuit-wide on a nonpartisan basis for a term of four years. The term begins on January 1 after the election.

   Ga. Const. Art. 6, § 7, ¶ 1
   O.C.G.A. §§ 21-2-138, 15-6- 4.1

   Annotations:
   i. *The omission of the phrase "until his successor is qualified" in the 1983 Constitution does not prevent a legally qualified incumbent from remaining in office after his or her four-year term of office ends. Garcia v. Miller, 261 Ga. 531; 408 S.E. 2d 97 (1991).*
   ii. *There is no constitutional or statutory bar to continuing to serve as judge of the state court until the effective date of resignation from that office, notwithstanding having taken the oath of office of judge of the superior court a few days before that term of office was to begin. Carey Canada, Inc. v. Hinely, 181 Ga. App. 364; 352 S.E. 2d. 398 (1986).*
   iii. *An appointee to fill a vacancy occurring in a superior or state court judgeship will serve*

until January 1 following the next general election which is more than six months after the date of the person's appointment, at which time the appointee will be required to run for a new four-year term of office regardless of the time remaining in the original term of office. Op. Atty. Gen. 86-31.

iv. *The designation of a magistrate to preside over a trial cloaked the magistrate with statutory and constitutional authority to exercise judicial power of the superior court, but did not make him a superior court judge. Consequently, a magistrate's designation to preside in superior court did not violate the constitutional requirements that superior court judges be elected. Massey v. State, 265 Ga. 632; 458 S.E. 2d 818 (1995).*

7. Elected in the general election held on the Tuesday following the first Monday in November in each even-numbered year preceding the expiration of the term of office.

   O.C.G.A. § 21-2-9

   Annotation:

   It is settled in this state and in many other jurisdictions of this country that an election is absolutely void when not held in the proper time and place and by persons qualified to hold it. Davis v. Page, 217 Ga. 751, 125 S.E.2d 60 (1962).

8. A candidate for judge 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:

   i. *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).*
   ii. *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.*
   iii. *For the purposes 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 the ex-officio position held by the incumbent. Op. Atty. Gen. 70-53.*
   iv. *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).*

9. In the event that a candidate pays his or her qualifying fee with a check that is subsequently returned for insufficient funds, the Secretary of State shall automatically find that such candidate has not met the qualifications for holding the office being sought, unless the bank, credit union, or other financial institution returning the check certifies in writing by an officer's or director's oath that the bank, credit union, or financial institution erred in returning the check.

   O.C.G.A. § 21-2-5 (d)

10. 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 state general or no later than seven days after the close of the special election qualifying period for a special election. In a general special election of county officers,
    i. notice must be filed with the Secretary of State and published in a paper of general circulation in the state 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
    ii. a copy of the notice as published and an affidavit that the notice has been published, including the name of the newspaper and date of publication, must be filed with the Secretary of State not later than the fifth day after the deadline for filing and publishing such notice.

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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, judge of superior court, district attorney, any elected county officer, and any elected municipal officer.

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

    O.C.G.A § 21-2-7

Oath of Office

13. Before entering on the duties of their office, superior court judges are required to take the following oath:

    "I swear that I will administer justice without respect to person and do equal rights to the poor and the rich and that I will faithfully and impartially discharge and perform all the duties incumbent on me as judge of the superior courts of this state, according to the best of my ability and understanding, and agreeably to the laws and Constitution of this state and the Constitution of the United States. So help me God."

    O.C.G.A. § 15-6-6

    Note:
    The federal constitution requires that the judicial officers of the state be bound by oath or affirmation to support the federal constitution. See U.S. Const., Art. 6, § 3.

14. 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;
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    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. §§ 15-6-6, 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.

    Cross-Reference:
    Any public officer who willfully and intentionally violates the terms of his or her oath as prescribed by law shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than five years. O.C.G.A. §16-10-1.

15. 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.

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    Annotations:
    i. 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.
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    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.
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    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.
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"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).

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iii. *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.*

iv. *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.*

v. *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).*

vi. *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).*

vii. *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).

viii. *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).*

ix. *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).*

x. *An indictment alone would not disqualify a person as a candidate for public office.Op. Atty. Gen. U68-102.*

xi. *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.*

xii. *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.*

xiii. *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.*

19. Suspension and removal from office upon felony indictment or conviction:
    a) Upon indictment for a felony by a grand jury of this state or of the United States, which felony relates to and adversely affects the administration of justice, the state constitution provides a means by which the indicted judge may be suspended, with pay, pending the final disposition of the case or the expiration of the judge'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 judge 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.

    Ga. Const. Art. 6, § 7, ¶ 7
    O.C.G.A. § 45-5-2

20. It is unlawful for the judges of the superior court to accept or hold office or employment in the executive branch of the state government, or any agency thereof, or in the legislative branch of the state government.

    Ga. Const. Art. 1, § 2, ¶ 3
    O.C.G.A. § 16-10-9 (a) (2)

DISTRICT ATTORNEY

Qualifications

1. Must have been a resident citizen of the state for three years just preceding election or appointment.
2. Must permanently reside in the circuit at the time of election or appointment.
3. Must have attained the age of 25 years.
4. Must have been duly admitted and licensed to practice law in the superior courts for at least three years.
5. If disbarred from practice of law, must have been reinstated as provided by law.

   O.C.G.A. § 15-18-3

6. Must have been an active-status member of the State Bar of Georgia for three years immediately preceding such person's election.

   Ga. Const. Art. 6, § 8, ¶ 1(b)

Annotations:

i. *A person who is admitted to practice law but never registered or paid any license fee to the State Bar of Georgia until "right before" he entered the election for the office of district attorney, does not meet the requirements of having practiced for three years immediately preceding his election. No person can legally practice law without first registering and paying the license fee. Wallace v. Wallace, 225 Ga. 102, 166 S.E.2d 718 (1969).*

ii. *The specific language requiring admission to practice "in the superior courts" means the superior courts of Georgia and not practice in courts of similar jurisdiction in the other states. Whitmer v. Thurman, 241 Ga. 569, 247 S.E.2d 104 (1978).*

iii. *The requirement that the district attorney must have three years' experience of active practice of law before taking office does not deny equal protection of law to one who could not qualify under the requirement. Nathan v. Smith, 230 Ga. 612, 198 S.E.2d 509 (1973).*

iv. *A third year law student who serves as a legal assistant to a district attorney pursuant to O.C.G.A. § 15-18-22 does not thereby become "duly admitted and licensed to practice law in the superior courts" for the purpose of determining eligibility to the office of district attorney. Op. Atty. Gen. 76 -28.*

v. *A candidate for the office of district attorney must meet the three-year practice of law requirement at the time of his or her election to the office rather than at time of his or her qualification for the office. Op. Atty. Gen. 78-20.*

vi. *The word "election" as it appears in these provisions means the day votes are cast, not the day when they are finally tabulated and certified by the secretary of state. Poythress v. Moses, 250 Ga. 452, 298 S.E. 2d 480 (1983).*

Term of Office and Election

7. Elected circuit-wide for a term of four years at the general election immediately preceding the expiration of the term of office; shall be elected by the electors of their respective circuits at the general election held immediately preceding the expiration of their respective terms. Vancancies shall be filled by appointment of the Governor.

Ga. Const. Art. 6, § 8, ¶ 1 (a)
O.C.G.A. § 21-2-9, 21-2-2 (15)

8. A candidate for the office of district attorney 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:

   i. If 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).

   ii. 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.

   iii. 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 the ex-officio position held by the incumbent. Op. Atty. Gen. 70-53.

   iv. 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).

9. In the event that a candidate pays his or her qualifying fee with a check that is subsequently returned for insufficient funds, the Secretary of State shall automatically find that such candidate has not met the qualifications for holding the office being sought, unless the bank, credit union, or other financial institution returning the check certifies in writing by an officer's or director's oath that the bank, credit union, or financial institution erred in returning the check.

   O.C.G.A. § 21-2-5 (d)

10. 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 state general or no later than seven days after the close of the special election qualifying period for a special election. In a general special election of county officers,
       i. notice must be filed with the Secretary of State and published in a paper of general circulation in the state 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
       ii. A copy of the notice as published and an affidavit that the notice has been published, including the name of the newspaper and date of publication, must be filed with the Secretary of State 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

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, judge of superior court, district attorney, any elected county officer, and any elected municipal officer.

    O.C.G.A. § 21-2-136

12. No person who has been adjudged a "subversive person," as defined in Part 2 of Article 1 of Chapter 11 of Title 16, the "Sedition and Subversive Activities Act of 1953," shall be nominated or elected in accordance with this chapter.

    O.C.G.A. § 21-2-7

Oath of Office

13. A district attorney must take the following oath:

    "I do swear that I will faithfully and impartially and without fear, favor, or affection discharge my duties as district attorney and will take only my lawful compensation. So help me God."

    O.C.G.A. § 15-18-2

    Note:
    The federal constitution requires that the judicial officers of the state be bound by oath or affirmation to support the federal constitution. See U.S. Const., Art. 6, § 3.

14. 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 any 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.

    Cross-Reference:
    Any public officer who willfully and intentionally violates the terms of his or her oath as prescribed by law shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than five years. O.C.G.A. § 16 -10-1.

15. 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:

    i. *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.*
    ii. *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

16. All offices in the state shall be vacated
    a) By the death of the incumbent;
    b) By resignation, when accepted;
    c) By decision of a competent tribunal declaring the office vacant;
    d) By voluntary act or misfortune of the incumbent whereby he is placed in any of the specified conditions of ineligibility to office;
    e) By the incumbent ceasing to be a resident of the state or of the county, circuit, or district for which he was elected;
    f) By failing to apply for and obtain commissions or certificates or by failing to qualify or give bond, or both, within the time prescribed by the laws and Constitution of Georgia; or
    g) By abandoning the office or ceasing to perform its duties, or both.

    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

17. Vacancy in office is filled by appointment of the Governor or election only for the remainder of the unexpired term.

    Ga. Const. Art. 6, § 8, ¶ 1 (a)
    O.C.G.A. § 45-5-3

    Cross-References:

    a) A district attorney cannot be deprived of office when the county in which he or she resides is moved into a different circuit. Such attachment does not create a vacancy in office. O.C.G.A. § 15-18- 4.
    b) When the district attorney is absent, indisposed, or disqualified for interest or relationship, the presiding judge may appoint a substitute. Such appointment does not create a vacancy in office. O.C.G.A. § 15-18-5.

General Disqualifications

18. 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:

i. *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).*
ii. *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).*
iii. *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.

iv. *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.*

v. *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).*

vi. *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).*

vii. *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).*

viii. *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).*

ix. *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).*

x. *An indictment alone would not disqualify a person as a candidate for public office. Op. Atty.*

Gen. U68-102.

xi. *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.*

xii. *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.*

xiii. *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.*

19. 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

Annotation:

When a public official's initial conviction is set aside on appeal and a new trial ordered, that official is entitled to have his or her salary resumed and receive back compensation. Op. Atty. Gen. U91-14.

20. Compensation of district attorneys:
    a) Each district attorney shall receive an annual salary from state funds as prescribed by law. Such salary shall be paid as provided in Code Section 15-18-19.
    b) The county or counties comprising the judicial circuit may supplement the salary of the district attorney in such amount as is or may be authorized by local Act or in such amount as may be determined by the governing authority of such county or counties, whichever is greater.
    c) All fees, fines, forfeitures, costs, and commissions formerly allowed district attorneys for their services as district attorney or as solicitor of any other court shall become the property of the county in which the services of the district attorney were rendered. The clerk of court shall collect any such fees, fines, forfeitures, costs, and emoluments and remit the same to the county treasury by the fifteenth day of each month.
    d) No district attorney receiving an annual salary under this Code section shall engage in the private practice of law.

O.C.G.A. § 15-18-10

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 next 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:

    i. 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).

ii. *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.*

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iv. *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, judge of superior court, district attorney, 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,
        i. 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
        ii. 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 who has been adjudged a "subversive person," as defined in Part 2 of Article 1 of Chapter 11 of Title 16, the "Sedition and Subversive Activities Act of 1953," shall be nominated or elected in accordance with this chapter.

    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 $150,000, which amount may be increased in any county by local act or by an ordinance or resolution of the governing authority. 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 or affirm 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 I am required by law to record; 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 or any political subdivision or authority therof;
    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.
    e) if elected by any circuit or district, swear that he or she has been a resident thereof for the time required by the Constitution and laws 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:

    i. *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.*
    ii. *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
    a) death or resignation;
    b) ceasing to be a resident of the state, county, or district from which elected;
    c) 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:

i. 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).

ii. 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).

iii. *A convicted felon who has had his or her civil rights restored is eligible to vote andhold public office. Op. Atty. Gen. U77- 43.*

iv. *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.*

v. *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).*

vi. *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).*

vii. *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).*

viii. *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).*

ix. *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).*

x. *An indictment alone would not disqualify a person as a candidate for public office.Op. Atty. Gen. U68-102.*
xi. *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.*
xii. *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.*
xiii. *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

JUDGE OF PROBATE COURT

Qualifications

1. Must be a citizen of the United States.
2. Must have been a resident of the county for at least two years prior to qualifying for election to the office and must continue residing there.
3. Must be a registered voter.
4. Must have attained the age of 25 years prior to the date of qualifying for election to the office.
5. Must have obtained a high school diploma or its recognized equivalent.
6. Must not have not been convicted of a felony or offense involving moral turpitude.
7. 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 judge of the probate court, prior to or at the time of qualifying, affirming that he or she meets all the require qualifications for such office.

   O.C.G.A. § 15-9-2

8. The General Assembly may provide by law for additional qualifications, including, but not limited to, minimum residency requirements.

   Ga. Const. Art. 6, § 7, ¶ 2; Art. 9, § 1, ¶ 3
   O.C.G.A. §§ 45-2-1, 15-9-2

   Annotation:
   A candidate may live in one county while remaining domiciled in another and still meet the county residency requirement for the office of judge of the probate court. Evidence that compels a finding that a candidate claimed more than the one homestead exemption to which he was entitled does not necessarily compel a finding that the candidate intended to change his county of domicile. Johnson v. Byrd, 263 Ga. 173; 429 S.E. 2d 923 (1993).

9. Additional qualifications in counties with a population over 90,000 according to the United States decennial census of 2010 or any future such census includes the following:
   a) Must not engage in the private practice of law.
   b) Must have attained the age of 30 at the time of election.
   c) Must have been admitted to practice law for seven years preceding election.

   O.C.G.A. § 15-9- 4

Term of Office and Election

10. Term of office is four years and until the successor is elected and qualified. The term begins on January 1 and expires on January 1 four years after.

    Ga. Const. Art. 6, § 7, ¶ 1; Art. 9, § 1, ¶ 3
    O.C.G.A. § 15-9-1

11. Elected in the November election preceding the expiration of the term of office.
    O.C.G.A. § 21-2-9

Annotation:

It is settled in this state and in many other jurisdictions of this country that an election is absolutely void when not held in the proper time and place and by persons qualified to hold it. Davis v. Page, 217 Ga. 751, 125 S.E.2d 60 (1962).

12. Elected by the qualified voters of the county.

    Ga. Const. Art. 9, § 1, ¶ 3
    O.C.G.A. § 15-9-1

    Note:
    The General Assembly may provide by local act for the nomination and election in nonpartisan primaries and elections of candidates to fill county judicial offices. O.C.G.A. § 21-2-139.

13. A candidate for probate judge 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:

    i. 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).

    ii. 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.

    iii. 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 the ex-officio position held by the incumbent. Op. Atty. Gen. 70-53.

    iv. 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).

14. 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. No later than seven days after the close of the qualifying period for nonpartisan elections in the case of nonpartisan elections for state or county offices; no later than seven days after the close of the municipal qualifying period for municipal elections in the case of a general election; or no later than seven days after the close of the special election qualifying period for a special election by the person to be a write-in candidate or by some other person or group of persons qualified to vote in the subject election, as follows In a general or special election of county officers,
        i. 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

ii. 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 superintendent of elections not later than the fifth day after the deadline for filing and publishing such notice.

iii. In a state general or special election, notice shall be filed with the Secretary of State and published in a newspaper of general circulation in the state.

Ga. Const. Art. 2, § 2, ¶ 3
O.C.G.A. § 21-2-133

15. 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, judge of superior court, district attorney, any elected county officer, and any elected municipal officer.

O.C.G.A. § 21-2-136
O.C.G.A. § 21-2-8

16. No person who has been adjudged a "subversive person," as defined in Part 2 of Article 1 of Chapter 11 of Title 16, the "Sedition and Subversive Activities Act of 1953," shall be nominated or elected in accordance with this chapter.

O.C.G.A. § 21-2-7

Bond Requirements

17.

a) Must furnish bond in the sum of $25,000, which may be increased in any county by local legislation, for the faithful discharge of his or her duties as clerk of the judge of the probate court.

O.C.G.A. § 15-9-7

Note:
Probate judge is, by virtue of his or her office, clerk of his or her own court. See O.C.G.A. § 15-9-36(a).

b) The bond must be filed by the first day of January after the election. O.C.G.A. § 45-4-14
c) The bond must be made payable to the Governor and his or her successor in office. O.C.G.A. § 45-4-1

18. During the term of the judge of the probate court, if the judge of the superior court determines that the bond is insufficient or the security insolvent, it shall be his or her duty to require other security. On failure of the judge of the probate court to comply with the order, a vacancy shall be declared as if the judge of the probate court had failed to give security in the first instance.

O.C.G.A. § 15-9-9

19. The office of probate judge shall be vacated upon failure to give bond within the time prescribed. 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 the Office

20. Before entering on the duties of office, the judges of the probate courts must take and file the oaths required of all civil officers and, in addition, the following oath:

    "I do swear that I will well and faithfully discharge the duties of judge of the probate court for the County of _____ , during my continuance in office, according to law, to the best of my knowledge and ability, without favor or affection to any party, and that I will only receive my legal fees. So help me God."

    O.C.G.A. § 15-9-6

21. 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. §§ 15-9-6, 45-3-1

    Note:
    The official acts of an office 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.

    Cross-Reference:
    Any public officer who willfully and intentionally violates the terms of his or her oath as prescribed by law shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than five years. O.C.G.A. § 16-10-1.

22. 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:
    i. 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.
    ii. 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

23. Any judge may be removed, suspended, or otherwise disciplined for
    a) willful misconduct in office;
    b) willful and persistent failure to perform the duties of office;
    c) habitual intemperance;
    d) conviction of a crime involving moral turpitude;
    e) or for conduct prejudicial to the administration of justice which brings the judicial office into disrespect.

    Any judge may be retired for disability which constitutes a serious and likely permanent interference with the performance of the duties of office. The Supreme Court shall adopt rules of implementation.

    Ga. Const. Art. 6, § 7, ¶ 7

    Annotation:
    The Supreme Court possesses the authority to regulate the conduct of judges—including conduct during judicial elections. Judicial Qualifications Commission v. Lowenstein, 252 Ga. 432, 314 S.E.2d 107 (1984).

24. All elected or appointed offices are deemed vacant upon the incumbent's
    a) death or resignation;
    b) ceasing to be a resident of the state, county, or district from which elected;
    c) 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

25. When a vacancy in the office occurs, in descending order, the chief judge (if any and if available) of the state or city court, or the clerk of the superior court (if available), or some person appointed by the chief judge of the superior court shall serve as probate judge until the vacancy is filled.

    O.C.G.A. § 15-9-10

    Note:
    See O.C.G.A. §§ 15-9-11.1 and 15-9-36, concerning assumption of the duties of the office by the chief clerk of the probate judge.

26. Within 10 days after the vacancy occurs, the person serving as probate judge shall order a special election to fill the vacancy for the unexpired term.

    O.C.G.A. § 15-9-11

27. The judge of the probate court is ineligible for reelection if he or she fails to account faithfully as executor, administrator, or guardian, after becoming judge, for all trusts he or she held at the time of

his or her election.

O.C.G.A. § 15-9-5

General Disqualifications

28. 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.
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ix. *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).*

x. *An indictment alone would not disqualify a person as a candidate for public office.Op. Atty. Gen. U68-102.*

xi. *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.*

xii. *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.*

xiii. *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.*

29. Suspension and removal from office upon felony indictment or conviction:
    a) Upon indictment for a felony by a grand jury of this state or the United States, which felony relates to and adversely affects the administration of justice, the state constitution provides a means by which the indicted judge may be suspended, with pay, pending the final disposition of the case or the expiration of the judge's term of office, whichever occurs first.
    b) After initial conviction by the trial court, the judge shall not be entitled to receive compensation from his or her office. For the duration of the suspension, the Governor shall appoint a replacement judge.
    c) Upon final conviction with no appeal or review pending, the office shall be declared vacant 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.

    Ga. Const. Art. 6, § 7, ¶ 7 (b) (1)
    O.C.G.A. § 45-5-2

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

    O.C.G.A. § 45-2-2

Annotation:

A replacement probate judge appointed in good faith pursuant to O.C.G.A. § 15-9-13 (a) may be designated pursuant to O.C.G.A. § 15-1-9.1 to assist temporarily a state court for a specified duration, assuming the individual meets the statutory qualifications of

O.C.G.A. § 15-7-2 (a) (1).

SHERIFF

Qualifications

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

   O.C.G.A. § 15-16-1 (c) (1) (B)

   Annotation:

   The residency requirement refers to domicile. There must be either the tacit or 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 avowed 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 have attained the age of at least 25 at the time of qualifying as a candidate.
3. Must have obtained a high school diploma or its recognized equivalent in educational training as established by the Georgia Peace Officer Standards and Training Council.
4. Must be a citizen of the United States.
5. Must not have been convicted of a felony offense or any offense involving moral turpitude contrary to the laws of this state, or any other state, or the United States, provided, however, that a plea of nolo contendere to a felony offense or any offense involving moral turpitude contrary to the laws of this state shall have the same effect as a plea of guilty, thereby disqualifying such a person from holding the office of sheriff.
6. Must be fingerprinted and have a search made of local, state, and national fingerprint files to disclose any criminal record, which fingerprints are to be taken under the direction of the judge of the probate court, and must be taken on or before, but no later than, the close of qualification for election to the office of sheriff.
7. Must give a complete written history of his or her places of residence for a period of sixyears immediately preceding the qualification date, giving house number or RFD number, street, city, county, and state as well as a complete written history of his or her places of employment for a period of six years immediately preceding the qualification date, giving period of time employed, and name and address of employer.

   Ga. Const. Art. 9, § 1, ¶ 3
   O.C.G.A. § 15-16-1 (c) (1)

   Note:
   The requirements of O.C.G.A. § 15-16 -1 (c) (1) (D)-(F), (H)-(J) shall be deemed to have been met by any person currently serving as a duly qualified and elected sheriff of one of the several counties of this state.

   Annotations:

   i. The requirement that the candidate for sheriff have a high school diploma or its equivalent does not violate equal protection. There is a reasonable basis for a mini-mum education requirement stated by reference to an objective standard. The re-quirement does not unduly burden either the candidate or the voter. It is reasonably necessary to accomplish a

legitimate state objective. Goforth v. Poythress, 638 F.2d 27 (5th Cir. 1981).

ii. *The court held that despite the fact that the person has been pardoned from conviction for involuntary manslaughter, he remains disqualified to seek the office of sheriff. The court found that it was the intention of the General Assembly to prohibit a convicted felon from running for the office of sheriff even though he has been pardoned. Barbour v. Democratic Executive Committee of Crawford County, 246 Ga. 193, 269 S.E.2d 433 (1980). Also see Op. Atty. Gen. 80-56.*

iii. *A person who has been convicted in the federal court for federal income tax evasion upon plea of nolo contendere is ineligible to run for the office of sheriff. Op. Atty. Gen. 80-96.*

iv. *A person otherwise possessing the qualifications to hold the office of sheriff may not be barred from such office because of his or her blindness. Op. Atty. Gen. U80-1.*

8. Each candidate for the office of sheriff must be a registered peace officer or a certified peace officer. Any person who is not a registered or certified peace officer at the time such person assumes the office of sheriff shall be required to complete satisfactorily the requirements for certification within six months after such person takes office.

   O.C.G.A. § 15-16-1 (c)(1)(J)

   Notes:
   a) Members of the United States armed forces on terminal leave are generally eligible for employment/certification as peace officers in Georgia, but O.C.G.A. § 45-2-1 prohibits members of the armed forces from holding civil office. Such a person could serve as a police officer, but not as sheriff. Op. Atty. Gen. 89-30.
   b) To hold the office of sheriff, even as an interim appointment, an appointee must seek certification as a peace officer as required under O.C.G.A. § 15-16-1 or get a waiver as prescribed under the same code section. Op. Atty. Gen. n96-14.

9. Each candidate for the office of sheriff must, within 60 days prior to or at the time he or she qualifies;
   a) file with the officer before whom he or she has qualified to seek the office of sheriff a certified copy of his or her birth certificate and a certified copy of his or her high school diploma or certified proof of its recognized equivalent in educational training as established by the Georgia Peace Officer Standards and Training Council; and
   b) swear or affirm before the officer before whom such person has qualified to seek the office of sheriff that he or she has met, meets, or will meet no later than the close of qualifying, all of the required qualifications.

   O.C.G.A. § 15-16-1 (c) (2)

Term of Office and Election

10. Term of office is four years.
11. Shall be elected by the qualified voters of the county.

    Ga. Const. Art. 9, § 1, ¶ 3
    O.C.G.A. § 15-16-1 (b)

12. Shall be elected in the general election held on the Tuesday next following the first Monday in November in each even-numbered year preceding the expiration of the term of office.

    O.C.G.A. §§ 21-2-9, 21-2-2 (15)

13. A candidate for sheriff 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:

i. *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).*
ii. *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.*
iii. *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 the ex-officio position held by the incumbent. Op. Atty. Gen. 70-53.*
iv. *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, 309 S.E.2d 217 (1990).*

14. 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, judge of superior court, district attorney, any elected county officer, and any elected municipal officer.

O.C.G.A. § 21-2-136

15. 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 elec-tion 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,
        i. 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
        ii. a copy of the notice as published and an affidavit that the notice has been pub lished, 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

16. No person shall be nominated or elected who has been adjudged a "subversive person" as defined in the Sedition and Subversive Activities Act of 1953.

    O.C.G.A. § 21-2-7

Bond Requirements

17.
    a) Must give bond in the sum of $25,000, which amount may be increased in any county by local act, conditioned upon the faithful accounting for all public and other funds or property coming into the sheriffs' or their deputies' custody, control, care, or possession. O.C.G.A. § 15-16-5
    b) The bond must be approved by the judge of the probate court and recorded and filed in his office.

    O.C.G.A. §§ 15-16-6, 15-16-7

Note:

    c) The bond must be examined by the presiding judge of the superior court. See O.C.G.A. § 15-16-6. The bond must be filed by the first day in January after the election. O.C.G.A. § 45- 4-14
    d) The bond must be made payable to the Governor and his successor in office and conditioned upon faithful discharge of duties.

    O.C.G.A. § 45-4-1

    e) The office of sheriff shall be vacated upon failure to give bond within the time prescribed by the laws and 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

18. Before entering on the duties of office, the sheriff must, in addition to the oaths required of all civil officers, take the following oath before the judge of the superior court or judge of the probate court:

    "I do swear that I will faithfully execute all writs, warrants, precepts, and processes directed to me as sheriff of this county, or which are directed to all sheriffs of this state, or to any other sheriff specially, which I can lawfully execute, and true returns make, and in all things well and truly, without malice or partiality, perform the duties of the office of sheriff of _____ County, during my continuance therein, and take only my lawful fees. So help me God."

    O.C.G.A. § 15-16- 4

Note:
Sheriffs now receive no compensation except that which is in the nature of an annual salary fixed by law. See O.C.G.A. § 15-16-19 (b).

Annotation:

Acts of sheriff are legal and valid though no oath of office has been administered to him. Philpot v. Wells, 69 Ga. App. 489, 26 S.E.2d 155 (1943).

19. 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 or any political subdivision or authority therof;
    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
    e) if elected by any circuit or district, swear that he or she has been a resident thereof for the time required by the Constitution and laws 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.

20. A loyalty oath is also required 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.

    O.C.G.A. §§ 45-3-11, 45-3-12, 45-3-13

    Annotations:
    i. 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.
    ii. 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

21. All elected or appointed offices are deemed vacant upon the incumbent's
    a) death or resignation;
    b) ceasing to be a resident of the state, county, or district from which elected;
    c) 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

22. 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. §§ 15-16-8 (a), 15-6 -54 (a)

23. 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. §§ 15-16-8 (a), 15-6 -54 (b), 15-6-56 (a) and (b)

24. If less than six months of the sheriff's term of office remains at the time of the vacancy occurs, the chief deputy sheriff or the interim sheriff, as the case may be, shall hold office for the unexpired term of the sheriff.

    O.C.G.A. § 15-16-8 (b)

General Disqualifications

25. 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.
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ix. *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).*

x. *An indictment alone would not disqualify a person as a candidate for public office. Op. Atty. Gen. U68-102.*

xi. *Where a potential candidate has been convicted of a felony involving moral turpi- tude, pardon or restoration of civil rights is necessary to hold any office or appoint- ment of honor or trust even if the sentence has been completed. Op. Atty. 83-33.*

xii. *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.*

xiii. *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.*

26. Suspension and removal from office upon felony indictment or conviction:
    a) Upon indictment for a felony by a grand jury of this state or by the United States, 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.

    O.C.G.A. § 45-5-6

27. 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

28. The sheriff can be removed from office by the judge of the superior court for any suffi cient cause, including incapacity or misbehavior in office.

    O.C.G.A. §§ 15-16-10 (b), 15-6-82

29. Certain sureties are ineligible to hold the office of sheriff. For example, a surety for any tax collector

or other holder of public money is ineligible for the office of sheriff until all moneys for which he is bound have been paid to the proper authority.
O.C.G.A. § 15-16-2

TAX COMMISSIONER

Qualifications

1. Must have been a resident of the county for at least two years prior to qualifying for elec tion to the office and must continue residing there.

   O.C.G.A. § 48-5-210

   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 avowed 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 holding office of tax commissioner 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 (except for persons holding the office on April 1, 1986).
4. Must be both a citizen of the United States and of the state.

   O.C.G.A. §§ 45-2-1, 48-5-210

5. 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 tax commissioner, prior to or at the time of qualifying, affirming that he or she meets the required qualifications for such office.

   O.C.G.A. § 48-5-210

Term of Office and Election

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

   Ga. Const. Art. 9, § 1, ¶ 3
   O.C.G.A. § 48-5-210

8. 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, 21-2-2 (15)

9. A candidate for tax commissioner 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:

   i. 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).

ii. *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.*

iii. *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 compensa- tion paid for the ex-officio position held by the incumbent. Op. Atty. Gen. 70-53.*

iv. *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).*

10. 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, judge of superior court, district attorney, any elected county officer, and any elected municipal officer.

    O.C.G.A. § 21-2-136

11. 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,
        i. 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
        ii. 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

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

    O.C.G.A. § 21-2-7

Bond Requirements

13.
    a) Must give bond and security for 40 percent of the state tax supposed to be due from the county for the year for which he or she is required to give bond. The amount of the bond shall be determined by the state revenue commissioner, but shall not exceed $50,000. O.C.G.A. § 48-5-122 (a)
    b) Must give bond with sufficient security payable to the county governing authority, conditioned upon the faithful performance of his or her duties as tax commissioner for the collection of the county taxes, for an amount to be fixed by the county governing authority, but not to exceed $100,000. O.C.G.A. § 48-5-122 (b)
    c) The bond for county taxes must be approved by the county governing authority, filed in its office, and recorded in the book with other official bonds. O.C.G.A. § 48-5-123, see also § 45-4-13
    d) The bond for state taxes, after being approved by the probate judge, shall be recorded by the judge, and the original bond shall be transmitted to the Governor for deposit in the comptroller general's office. O.C.G.A. § 45- 4-13
    e) Bonds must be filed by the first day of January after the election. O.C.G.A. § 45-4-14
    f) The bond for state taxes 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
    g) The office of tax commissioner shall be vacated upon failure to give bond within the time prescribed by the laws and 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

14. Since the office of tax commissioner is a consolidation of the office of tax receiver and tax collector, the tax commissioner must take, in addition to the oaths required of all civil officers, the following oath required of the tax receiver:

    "I swear I will truly and faithfully perform the duties of receiver of returns of taxable property, or of persons or things specially taxed in the county to which I am appointed, as required of me by the laws, and will before receiving returns carefully examine each, and will to the best of my ability carry out all the requirements made upon me by the tax laws. So help me God."

    O.C.G.A. § 48-5-101

15. Since the tax commissioner is also the tax collector, he or she must take, in addition to the oaths required of all civil officers, the following oath required of the tax collector as:

    "*I, _____ , tax collector of the County of _____ , do swear that I will faithfully discharge the duties required of me by law as tax collector, and that I will search out and make a true return of all defaulters, and all taxable property not found on the tax receiver's digest or not returned according to law, and that I will pay over all taxes collected by me, as required by law."*

    O.C.G.A. § 48-5-121

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 or any political

subdivision or authority therof;

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.
e) if elected by any circuit or district, swear that he or she has been a resident thereof for the time required by the Constitution and laws 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:

i. 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.

ii. 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
    a) death or resignation;
    b) ceasing to be a resident of the state, county, or district from which elected;
    c) 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 Governor may vacate the commission of a defaulting tax commissioner for failing or refusing to do his or her duty, give bond, or take the oath required.

O.C.G.A. § 48-5-204

20. In the event of a vacancy in the office, the judge of the probate court must appoint a qualified

person to discharge the duties until the vacancy is filled.

O.C.G.A. § 48-5-211

21. When a vacancy occurs and it is not more than six months from the time the election can be called by the county election superintendent 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. § 48-5-211

    Note:
    See O.C.G.A. § 48-5-212, concerning assumption of the duties of the office by the chief deputy tax commissioner.

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:

i. *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).*

ii. *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).*

iii. *A convicted felon who has had his or her civil rights restored is eligible to vote andhold public office. Op. Atty. Gen. U77- 43.*

iv. *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.*

v. *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).*

vi. *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).

vii. *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).*

viii. *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).*

ix. *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).*

x. *An indictment alone would not disqualify a person as a candidate for public office. Op. Atty. Gen. U68-102.*

xi. *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.*

xii. *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.*

xiii. *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

Annotation:

Tax commissioner must resign his or her office prior to assuming another county office by submitting his or her resignation to Governor. Op. Atty. Gen. U78-37.

TAX RECEIVER / TAX COLLECTOR

This edition eliminates separate descriptions of the laws pertaining to the offices of tax receiver and tax collector. The Georgia Constitution authorizes counties to replace the tax receiver and the tax collector with a tax commissioner. All 159 counties in the state have done so, consolidating these offices into a single tax commissioner.

The qualifications and disqualifications for holding the offices of county tax receiver and county tax collector are identical under the law to those for the county tax commissioner, and state law provides for the same terms of office and manner of election for these three officials.

Ga. Const. Art. 9, § 1, ¶ 3

JUDGE OF STATE COURT

Qualifications

1. Must be at least 25 years of age at the time of election.

   O.C.G.A. § 15-7-21 (a)(1)

2. Must have been a citizen of the state for three years preceding the beginning of the term of office.

   Ga. Const. Art. 6, § 7, ¶ 2 (e)
   O.C.G.A. § 15-7-21

3. Must, at the time of election, have been admitted to practice law for five years.

   Ga. Const. Art. 6, § 7, ¶ 2 (b)
   O.C.G.A. § 15-7-21 (a)(1)

4. Must reside in the geographical area in which selected to serve.

   Ga. Const. Art. 6, § 7, ¶ 2 (d)

   Note:
   If no candidate meets the residency requirement, qualifying must reopen and any person who has been a resident of the judicial circuit for three years and who meets all other requirements for the office may qualify. See O.C.G.A. § 15-7-21.

   Annotation:
   State court judges must continue to maintain residency in the county from which they are elected to remain in office. If he or she fails to do so, then the office becomes vacant as a matter of law. 1995 Op. Atty' Gen. U95-6.

5. Must be elected by the qualified electors of the county or counties in which the court is located.

   O.C.G.A. § 15-7-20

   A full time judge of the state court may not engage in the private practice of law. A part-time judge of the state cournt may engage in the private practice of law in other courts but may not practice in his own court of appear in any matter as to which that judge has excercised jusristiction

   O.C.G.A. § 15-7-21 (b)

Term of Office and Election

6. Elected on a nonpartisan basis for a term of four years. The term begins on January 1 after the election.

   Ga. Const. Art. 6, § 7, ¶ 1
   O.C.G.A. §§ 21-2-138, 15-7-20

Annotations:

i. *The omission of the phrase "until his successor is qualified" in the 1983 Constitution does not prevent a legally qualified incumbent from remaining in office after his or her four-year term of office ends. Garcia v. Miller, 261 Ga. 531; 408 S.E. 2d 97 (1991).*

ii. *There is no constitutional or statutory bar to continuing to serve as judge of the state court until the effective date of resignation from that office, notwithstanding hav- ing taken the oath of office of judge of the superior court a few days before that term of office was to begin. Carey Canada, Inc. v. Hinely, 181 Ga. App. 364; 352 S.E. 2d. 398 (1986).*

iii. *An appointee to fill a vacancy occurring in a superior or state court judgeship will serve until January 1 following the next general election which is more than six months after the date of the person's appointment, at which time the appointee will be required to run for a new four-year term of office regardless of the time remaining in the original term of office. Op. Atty. Gen. 86-31.*

7. Elected in the general election held on the Tuesday following the first Monday in November in each even-numbered year next preceding the expiration of the term of office.
O.C.G.A. § 21-2-9

Annotation:

It is settled in this state and in many other jurisdictions of this country that an election is absolutely void when not held in the proper time and place and by persons qualified to hold it. Davis v. Page, 217 Ga. 751, 125 S.E.2d 60 (1962).

8. A candidate for judge of state 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:

i. *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).*

ii. *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.*

iii. *For the purposes of computing qualifying fee, only the salary which the law pro vides for the office directly involved should be included and not the additional com pensation paid for the ex-officio position held by the incumbent. Op. Atty. Gen. 70-53.*

iv. *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).*

9. 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,

i. notice must be filed with the county superintendent of elections and published in the official paper 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
ii. a copy of the notice as published and an affidavit that the notice has been published, including the name of the newspaper and 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

10. 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, judge of superior court, district attorney, any elected county officer, and any elected municipal officer.

O.C.G.A. § 21-2-136

11. No person shall be nominated or elected who has been adjudged a "subversive person," as defined in Part 2 of Article 1 of Chapter 11 of Title 16, the " The Sedition and Subversive Activities Act of 1953".

O.C.G.A § 21-2-7

Oath of Office

12. Before entering on the duties of their office, state court judges shall take the same oaths which judges of the superior courts must take:

"I swear that I will administer justice without respect to person and do equal rights to the poor and the rich and that I will faithfully and impartially discharge and perform all the duties incumbent on me as judge of the state courts of this state, according to the best of my ability and understanding, and agreeably to the laws and Constitution of this state and the Constitution of the United States. So help me God."

Note:
The federal constitution requires that the judicial officers of the state be bound by oath or affirmation to support the federal constitution. See U.S. Constitution, Art. 6, § 3.

13. 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 or any political subdivision or authority therof;
    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.
e) if elected by any circuit or district, swear that he or she has been a resident thereof for the time required by the Constitution and laws of this state.

O.C.G.A. §§ 15-7-20, 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.

Cross-Reference:
Any public officer who willfully and intentionally violates the terms of his or her oath as prescribed by law shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than five years. O.C.G.A. § 16 -10-1.

14. 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:

i. 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.

ii. 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

15. Any judge may be removed, suspended, or otherwise disciplined for:
    a) willful misconduct in office;
    b) willful and persistent failure to perform the duties of office;
    c) habitual intemperance;
    d) conviction of a crime involving moral turpitude;
    e) or for conduct prejudicial to the administration of justice which brings the judicial office into disrespect.

Any judge may be retired for disability which constitutes a serious and likely permanent interference with the performance of the duties of office. The Supreme Court shall adopt rules of implementation.

Ga. Const. Art. 6, § 7, ¶ 7

Annotation:

The Supreme Court possesses the authority to regulate the conduct of judges—including conduct during judicial elections. Judicial Qualifications Commission v. Lowenstein, 252 Ga. 432, 314 S.E.2d 107 (1984).

16. In case of vacancy by resignation, death, or otherwise, the vacancy shall be filled by appointment of the Governor. The appointee shall serve until a successor is duly selected and qualified and until January 1 of the year following the next general election which is more than six months after such person's appointment.

    Ga. Const. Art. 6, § 7, ¶ 3 and ¶ 4; Art. 5, § 2, ¶ 8 (a)
    O.C.G.A. § 45-5-3

General Disqualifications

17. 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:
    i. 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).

ii. *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).*

iii. *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.*

iv. *The conviction of the crime of "having liquor" does not render a person disquali-fied from holding public office if at the time of commission such crime carried only misdemeanor punishment. Op. Atty. Gen. 67-26.*

v. *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).*

vi. *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). *

vii. *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).*

viii. *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).*

ix. *The 1990 constitutional amendment does not preempt the enforcement of other quali-fications 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).*

x. *An indictment alone would not disqualify a person as a candidate for public office. Op. Atty. Gen. U68-102.*

xi. *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.*

xii. *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.*

xiii. *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.*

18. Suspension and removal from office upon felony indictment or conviction:
    a) Upon indictment for a felony by a grand jury of this state or of the United States, which felony relates to and adversely affects the administration of justice, the state constitution provides a means by which the indicted judge may be suspended, with pay, pending the final disposition of the case or the expiration of the judge'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 judge 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.

    Ga. Const. Art. 6, § 7, ¶ 7
    O.C.G.A. § 45-5-2

19. It is unlawful for the judges of the state court to accept or hold office or employment in the executive branch of the state government, or any agency thereof, or in the legislative branch of the state government.

    Ga. Const. Art. 1, § 2, ¶ 3

20. A full-time judge of the state court may not engage in the private practice of law. A parttime judge of the state court may engage in the private practice of law in other courts but may not practice in his or her own court or appear in any matter as to which that judge has exercised any jurisdiction.

    O.C.G.A. § 15-7-21(b)

CHIEF MAGISTRATE

Qualifications

1. Must have been a resident of the county for one year next preceding the beginning of the term of office and must continue residing there.
2. Must be a qualified voter.
3. Must be a citizen of the state and at least 25 years of age by the date his or her term of office begins.
4. Must possess a high school diploma or its equivalent.
5. The General Assembly may provide by law for additional qualifications, including, but not limited to, minimum residency requirements.

Ga. Const. Art. 6, § 7, ¶ 2
O.C.G.A. §§ 15-10-22, 45-2-1

Note:
Certain magistrates are excepted from these qualifications. See O.C.G.A. § 15-10-120

Term of Office and Election

6. Unless otherwise provided by local law, all magistrates taking office on or after January 1, 1985, shall be selected as provided in this subsection. The chief magistrate shall be elected by the voters of the county at the general election next preceding the expiration of the term of the incumbent chief magistrate, in a partisan election in the same manner as county officers are elected, for a term beginning on the first day of January following his election. His successors shall likewise be elected quadrennially thereafter for terms beginning on the first day of January following their election. Magistrates other than the chief magistrate shall be appointed by the chief magistrate with the consent of the judges of superior court. The term of a magistrate so appointed shall run concurrently with the term of the chief magistrate by whom he was appointed.

O.C.G.A. § 15-10-20 (d)

Notes:
   a) For filling the office of chief magistrate prior to January 1, 1985, see O.C.G.A. § 15-10-20 (c).
   b) The General Assembly may provide by local act for the nomination and election in nonpartisan primaries and elections of candidates to fill county judicial offices. See O.C.G.A. § 21-2-139.

7. A candidate for chief magistrate 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:
   i. 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).

ii. *A candidate for the final half of the 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.*

iii. *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 the ex-officio position held by the incumbent. Op. Atty. Gen. 70-53.*

iv. *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).*

8. 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,
      i. 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
      ii. a copy of the notice as published and an affidavit that the notice has been pub lished, 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

9. 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, judge of superior court, district attorney, any elected county officer, and any elected municipal officer.

   O.C.G.A. § 21-2-136

10. No person shall be nominated or elected who has been adjudged a "subversive person," as defined in Part 2 of Article 1 of Chapter 11 of Title 16, of the, "The Sedition and Subversive Activities Act of 1953".

    O.C.G.A. § 21-2-7

Bond Requirements

11.
    a) Must execute bond in the amount of $25,000 for the faithful performance of his or her duties, which bond may be increased by local law. O.C.G.A. § 15-10-20 (h)
    b) The bond must be filed by the first day of January after the election. O.C.G.A. § 45-4-14
    c) The bond must be made payable to the Governor and his or her successor in office. O.C.G.A. §§ 15-10-20 (h), 45- 4-1

Oath of Office

12. Before entering on the duties of office the chief magistrate must take the following specific oath:

    "I swear or affirm that I will duly and faithfully perform all the duties required of me as magistrate of _____ County."

    O.C.G.A. § 15-10-3

13. 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 or any political subdivision or authority thereof;
    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.
    e) if elected by any circuit or district, swear that he or she has been a resident thereof for the timerequired by the Constitution and laws of this state.

    O.C.G.A. §§ 15-10-3, 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.

    Cross-Reference:
    Any public officer who willfully and intentionally violates the terms of his or her oath as prescribed by law shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than five years. O.C.G.A. § 16 -10-1.

14. 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:
    i. 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.

ii. 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

15. Any judge may be removed, suspended, or otherwise disciplined for
    a) willful misconduct in office;
    b) willful and persistent failure to perform the duties of office;
    c) habitual intemperance;
    d) conviction of a crime involving moral turpitude;
    e) or for conduct prejudicial to the administration of justice which brings the judicial office into disrespect. Any judge may be retired for disability which constitutes a serious and likely permanent interference with the performance of the duties of office. The Supreme Court shall adopt rules of implementation.

    Ga. Const. Art. 6, § 7, ¶ 7

Annotation:

The Supreme Court possesses the authority to regulate the conduct of judges—including conduct during judicial elections. Judicial Qualifications Commission v. Lowenstein, 252 Ga. 432, 314 S.E.2d 107 (1984).

16. All elected or appointed offices are deemed vacant upon the incumbent's
    a) death or resignation;
    b) ceasing to be a resident of the state, county, or district from which elected;
    c) failing to obtain commissions or give bond within the time prescribed by law; or abandoning the office or ceasing to perform its duties.
    d) by voluntary act or misfortune of the incumbent whereby he is placed in any of the specified conditions of ineligibility to office
    e) by decision of a competent tribunal declaring the office vacant
    f) by abandoning the office or ceasing to perform its duties, or both.

    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

17. Unless otherwise provided by local law, a vacancy in the office of chief magistrate is filled by majority vote of the superior court judges of the county for the remainder of the unexpired term.

    O.C.G.A. § 15-10-20 (e)

General Disqualifications

18. 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 policymaking 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.

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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:

i. *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).*
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iii. *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.*
iv. *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.*
v. *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).

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viii. *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).*

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x. *An indictment alone would not disqualify a person as a candidate for public office. Op. Atty. Gen. U68-102.*

xi. *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.*

xii. *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.

xiii. *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.*

19. Suspension and removal from office upon felony indictment or conviction:
    a) Upon indictment for a felony by a grand jury of this state or of the United States, which felony relates to and adversely affects the administration of justice, the state constitution provides a means by which the indicted judge may be suspended, with pay, pending the final disposition of the case or the expiration of the judge'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 judge 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.

    Ga. Const. Art. 6, § 7, ¶ 7; O.C.G.A. § 45-5-2

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

    O.C.G.A. § 45-2-2

    Note:
    By local law, the probate judge can be required to serve as chief magistrate. See Ga. Const. Art. 6, § 1, ¶ 6; O.C.G.A. § 15-10-20 (g).

    Annotation:
    No county can benefit from a clerk's performance of administrative duties without being responsible for compensating the individual who performs those duties. Randolph County v. Bantz, 270 Ga. 66; 508 S.E. 2d 169.

21. A magistrate who is an attorney may practice in other courts but may not practice in the magistrate's own court or appear in any matter as to which that magistrate has exercised any jurisdiction.

    O.C.G.A. § 15-10-22

SOLICITOR-GENERAL OF STATE COURT

Qualifications

1. Must be at least 25 years of age.
2. Must have been admitted and licensed to practice law in the state of Georgia for at least three years.
3. Must upon taking office, permanently reside within the judicial circuit containing the geographic area in which such person shall serve.

O.C.G.A. § 15-18-62

Term of Office and Election

4. Term of office is four years.
5. Elected by the voters of the entire county, provided, however, that the method of selection of solicitor-general of a multicounty state court shall be as provided by the local act creating the multicounty court.
6. Elected at the general election held on the Tuesday next following the first Monday in November immediately preceding the expiration of the term of office.

O.C.G.A. §§ 15-18-60, 21-2-9

7. A candidate for the office of solicitor-general of state court must pay a qualification feeor file a pauper's affidavit.

O.C.G.A. §§ 21-2-131, 21-2-132, 21-2-153

Annotations:

i. 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).

ii. 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.

iii. 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 the ex-officio position held by the incumbent. Op. Atty. Gen. 70-53.

iv. 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 the statute. Rowland v. Tattnall County, 260 Ga. 109, 390 S.E.2d 217 (1990).

8. 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,

i. 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
ii. 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

9. 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, judge of superior court, district attorney, any elected county officer, and any elected municipal officer.

O.C.G.A. § 21-2-136

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

O.C.G.A. § 21-2-7

Oath of Office

11. A solicitor-general must take the following oath:

"I swear (or affirm) that I will faithfully and impartially and without fear, favor, or affection discharge my duties as solicitor-general of (here state the county) County. So help me God."

O.C.G.A. § 15-18-61

Note:
The federal constitution requires that the judicial officers of the state be bound by oath or affirmation to support the federal constitution. See U.S. Constitution, Art. 6, § 3.

12. 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 or any political subdivision or authority thereof;
    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.
e) If elected by any circuit or district, swear that he or she has been a resident thereof for the time required by the Constitution and laws 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.

13. 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, 45-3-13

Note:
The loyalty oath is required by all elected officers of the state. See O.C.G.A. § 45-3-12.

Annotations:

i. 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.

ii. 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

14. All elected or appointed offices are deemed vacant upon
    a) death or resignation;
    b) ceasing to be a resident of the state, county, or district from which elected;
    c) 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

15. In case of vacancy by resignation, death, or otherwise, the vacancy shall be filled by appointment of the Governor. The appointee shall serve until a successor is duly selected and qualified and until January 1 of the year following the next general election which is more than six months after such person's appointment.

Ga. Const. Art. 6, § 7, ¶¶ 3 and 4
O.C.G.A. § 15-18-60

General Disqualifications

16. A full-time solicitor-general of the state court may not engage in the private practice of law. A part-time solicitor general may engage in the private practice of law, but may not practice in such solicitor-general's state court or appear in any matter in which that solicitor-general has exercised jurisdiction.

    O.C.G.A. § 15-18-63

17. 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:

i. 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).

ii. *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).*

iii. *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.*

iv. *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.*

v. *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).*

vi. *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).*

vii. *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).*

viii. *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).

ix. *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).*

x. *An indictment alone would not disqualify a person as a candidate for public office.Op. Atty. Gen. U68-102.*

xi. *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.*

xii. *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.*

xiii. *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.*

18. 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

COUNTY COMMISSIONER

Qualifications

1. Must have been a resident of the county in which seeking the office for at least 12 months prior to election or appointment.

   O.C.G.A. §§ 45-2-1, 21-2-6

   Annotations:

   i. The residency requirement refers to domicile. There must be either the tacit or 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 avowed 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).

   ii. A candidate for office of county commissioner must be a resident for a period of months prior to his or her election but does not have to reside in the commission district from which he or she seeks election for that period. Op. Atty. Gen. 86-23.

   iii. A county is not authorized to establish more stringent residency requirements for election of county commissioners than the requirements in the O.C.G.A. Op. Atty. Gen. 97-27.

2. Must be a qualified voter.

   O.C.G.A. § 21-2-6

3. Must be a citizen of the state and must have attained the age of 21 years; provided, however, that upon passage of appropriate local ordinances, citizens of the state who are otherwise qualified and are at least 18 years of age shall be eligible to hold any county office, except offices of a judicial nature.

   O.C.G.A. §§ 45-2-1, 21-2-6

Term of Office and Election

4. Elected by qualified voters of the county.
5. Term of office is four years.

   Ga. Const. Art. 9, § 1, ¶ 1
   O.C.G.A. §§ 21-2-9 and local legislation enacted for individual counties

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

   See Ga. Const. Art. 9, § 1, and local legislation enacted for individual counties.
   O.C.G.A. §§ 21-2-9, 21-2-2 (15)

7. A candidate for county commissioner 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:

i. *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).*
ii. *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.*
iii. *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 the ex-officio position held by the incumbent. Op. Atty. Gen. 70-53.*
iv. *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).*

8. 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,
      i. 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
      ii. 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

9. 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, judge of superior court, district attorney, any elected county officer, and any elected municipal officer.

   O.C.G.A. § 21-2-136

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

    O.C.G.A. § 21-2-7

Oath of Office

11. 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.

    Cross-Reference:
    Any public officer who willfully and intentionally violates the terms of his or her oath as prescribed by law shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than five years. O.C.G.A. § 16 -10-1.

12. 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:
    i. 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.
    ii. 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

13. When a vacancy occurs in the office of a county governing authority in any county in which the local act creating that governing authority for the county makes no provision for succession to fill the vacancy and the unexpired term of office exceeds six months in duration, it shall be the duty of the judge of the probate court of the county to call a special election to elect a successor and fill the vacancy in not less than 30 nor more than 60 days. The election shall be held as provided by Chapter 2 of Title 21, the Georgia Election Code, and the cost of the election shall be defrayed by the proper county authorities. If the unexpired term to be filled is less than six months in duration and the local act creating the governing authority makes no provision to fill the vacancy, the judge of the superior court of the county shall have the power to appoint a successor to fill the unexpired term.

O.C.G.A. § 36-5-21 (a) See O.C.G.A. § 21-2-540, conduct of special elections. See also local laws pertaining to specific counties.

Note:
See O.C.G.A. § 36-5-21(b) and (c) concerning simultaneous vacancies in all commissioner offices or a vacancy in the office of sole commissioner.

Annotation:
The general law is not applicable if the local act creating the governing authority for the county provides for the manner of succession to fill the vacancy. Op. Atty. Gen. U90-9.

General Disqualifications

14. 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:

i. *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 proce-dures. Summerour v. Cartrett, 220 Ga. 31, 136 S.E.2d 724 (1964).*

ii. *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).*

iii. *A convicted felon who has had his or her civil rights restored is eligible to vote andhold public office. Op. Atty. Gen. U77- 43.*

iv. *The conviction of the crime of "having liquor" does not render a person disquali-fied from holding public office if at the time of commission such crime carried only misdemeanor punishment. Op. Atty. Gen. 67-26.*

v. *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).*

vi. *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).*

vii. *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).

viii. *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).*

ix. *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).*

x. *An indictment alone would not disqualify a person as a candidate for public office.Op. Atty. Gen. U68-102.*

xi. *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.*

xii. *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.*

xiii. *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.*

15. 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

Annotation:

Suspension of a county commission according to O.C.G.A. § 45-5-6 and O.C.G.A. § 45-5-6.1 without giving the commissioner the opportunity to challenge the validity of the charges in the indictment did not deprive the commissioner of procedural due process and did not deprive voters of any constitutional rights. Eaves v. Harris, 258 Ga. 1; 364 S.E. 2d 854.

16. 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

COUNTY CORONER

Qualifications

1. Must have been a resident of the county for at least two years prior to qualifying for election to the office and must remain a resident of the county during his or her term of office.

   O.C.G.A. § 45-16-1

   Annotation:

   The residency requirement refers to domicile. There must be either the tacit or 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 avowed 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 have attained the age of 25 years prior to the date of the general primary in the year he or she qualifies for election to the office.
3. Must have obtained a high school diploma or its recognized equivalent (except for persons serving as coroner on July 1, 1980).
4. Must be a citizen of the United States.
5. Must be a citizen of this state and must not have been convicted of a felony or any offense involving moral turpitude.
6. Each candidate must have successfully completed the next scheduled class, no longer than 180 days after such person's election or appointment, of a basic training course provided by the Georgia Police Academy.
   Note:
   Coroners in Georgia should take 32 hours of training approved by the Georgia Coroner's Training Council every year pursuant to O.C.G.A. § 45-16-6. Op. Atty. Gen. 90- 41.
7. 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 coroner, prior to or at the time of qualifying, affirming that he or she meets the required qualifications for such office.

   O.C.G.A. § 45-16-1

8. Any person holding office as the mayor of a municipality with a population of 5,000 or less is authorized to simultaneously serve as coroner; and any person holding the office of coroner is authorized to simultaneously serve as mayor of a municipality with a population of 5,000 or less.

   O.C.G.A. §§ 45-16-1, 45-2-1

   Note:
   A person may not be employed simultaneously with the Georgia Bureau of Investigation Division of Forensic Sciences and as a county deputy coroner. Op. Atty. Gen. 97-21.

Term of Office and Election

9. Term of office is four years.
10. Shall be elected by the qualified voters of the county in the same manner as are clerks of the

superior court.

Ga. Const. Art. 9, § 1, ¶ 3 (a)
O.C.G.A. § 45-16-1 (a)

11. Shall be 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, 21-2-1 (15)

12. A candidate for corner 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:

    i. 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).

    ii. 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.

    iii. 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 com-pensation paid for the ex-officio position held by the incumbent. Op. Atty. Gen. 70-53.

    iv. 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).

13. 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, judge of superior court, district attorney, any elected county officer, and any elected municipal officer.

    O.C.G.A. § 21-2-136

14. 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,
        i. 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

ii. 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

15. 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

16.
    a) Must give bond and surety in the sum of $12,500. Coroners are liable for retaining moneys collected or for otherwise failing to do their duty in the same manner as are sheriffs and are subject to the same proceedings. O.C.G.A. § 45-16- 4
    b) The bond must be approved by the judge of the probate court, filed in his or her office, and recorded by him or her. 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 coroner shall be vacated upon failure to give bond within the time prescribed by the laws and 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)
    f) When a corner is required to act in the place of a sheriff, generally or specially, the judge of the probate court may require an additional bond in such sum and with such sureties as the judge, in his or her discretion, may think sufficient to meet the contingency. O.C.G.A. § 45-16-5

Oath of Office

17. Before entering on the duties of office, the coroner must, in addition to oaths required of all civil officers, take the following oath:

    "I swear that I will well and truly serve the State of Georgia in said office and faithfully and truly execute all writs and precepts to me directed or which I may lawfully execute, when placed in my charge, and return the same according to the best of my knowledge, skill, and judgment; that I will in no case knowingly use or exercise my office illegally, corruptly, or unjustly and that I will not, under any pretense, take, accept, or enjoy any fee or reward pertaining to my office other than such as are allowed by law; but that I will, in all things touching the duties of my office, demean myself honestly, fairly, and impartially according to the best of my ability, so help me God."

    O.C.G.A. § 45-16-3

18. 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 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.

19. 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:

i. 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.

ii. 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

20. All elected or appointed offices are deemed vacant upon the incumbent's
    a) death or resignation;
    b) ceasing to be a resident of the state, county, or district from which elected;
    c) 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

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

O.C.G.A. §§ 45-16-1 (a), 15-6-82

22. In the event a vacancy occurs in the office of coroner, the judge of the probate court shall appoint a person to serve out the unexpired term of office and until his successor shall be duly elected and qualified.

O.C.G.A. § 45-16-2 (b)

Note:
See O.C.G.A. § 45-16-2 (a), concerning filling the office when an election fails to fill the office.

General Disqualifications

23. 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:

i. 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).

ii. 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).

iii. *A convicted felon who has had his or her civil rights restored is eligible to vote andhold public office. Op. Atty. Gen. U77- 43.*

iv. *The conviction of the crime of "having liquor" does not render a person disquali-fied from holding public office if at the time of commission such crime carried only misdemeanor punishment. Op. Atty. Gen. 67-26.*

v. *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, 25 S.E.2d 850 (1993) (misde-meanor criminal trespass).*

vi. *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).*

vii. *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).*

viii. *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).*

ix. *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).

x. *An indictment alone would not disqualify a person as a candidate for public office.Op. Atty. Gen. U68-102.*

xi. *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 appoint-ment of honor or trust even if the sentence has been completed. Op. Atty. 83-33.*

xii. *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.*

xiii. *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.*

24. 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.

    GA. Const. Art. 6, § 7, ¶ 7
    O.C.G.A. § 45-5-6

25. 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

COUNTY SURVEYOR

Qualifications

1. Must have been a resident of the county in which seeking the office for at least 12 months prior to election or appointment.

   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 avowed 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 have (unless serving as county surveyor on July 1, 1981) 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 this state and must not have been convicted of a felony or any offense involving moral turpitude.
6. In counties of 17,000 population or over, according to the census of 1960 or any future census, every person holding the post of county surveyor must be a qualified surveyor, licensed by the State Board of Registration for Professional Engineers and Land Surveyors, and must have successfully passed the examination given by the board as a prerequisite to the granting of a license as a land surveyor.

   O.C.G.A. §§ 36-7-2, 45-2-1

   Note:
   See O.C.G.A. § 36-7-2 (c) concerning prohibition against private practice of land surveying by unlicensed county surveyor.

7. Where there is not a county surveyor, any person who is a citizen of Georgia and who holds a current and valid certificate of registration as a land surveyor issued by the State Board of Registration for Professional Engineers and Land Surveyors may perform the duties of county surveyor, when specifically required or appointed to do so. The person must swear to perform the duties faithfully and impartially, to the best of his or her skill and knowledge.

   O.C.G.A. § 36-7-13

Term of Office and Election

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

   O.C.G.A. §§ 36-7-2 (a), 15-6-50

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

O.C.G.A. § 21-2-9

11. A candidate for county surveyor 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:

    i. *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).*
    ii. *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.*
    iii. *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.*
    iv. *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, 290 Ga. 109, 390 S.E.2d 217 (1990).*

12. 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, judge of superior court, district attorney, any elected county officer, and any elected municipal officer.

    O.C.G.A. § 21-2-136

13. 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,
        i. 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
        ii. 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

14. 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. § 21-2-27

Bond Requirements

15.
    a) Must furnish bond and security in the sum of $1,000. O.C.G.A. § 36-7-5
    b) The bond must be approved by the judge of the probate court, filed in his or her office, and recorded by him or her. 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 county surveyor shall be vacated upon failure to give bond within the time prescribed by the laws and constitution. No official acts shall be performed until the bond is approved and filed as required. O.C.G.A. §§ 45-5-51 (6), 45- 4-22 (a)

Oath of Office

16. Before entering on the duties of office, the county surveyor must, in addition to oaths required of all public officers, take the following oath:

    "I, _____ , swear that I will, to the best of my skill and knowledge, discharge the duties of surveyor of _____ County, and that I will not admeasure, survey, or lay out any land, in my capacity as such, or knowingly permit or cause it to be done, without a warrant first obtained for that purpose. So help me God."

    O.C.G.A. § 36-7-5

17. 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.

18. 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:

i. *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.*
ii. *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

19. All elected or appointed offices are deemed vacant upon the incumbent's
    a) death or resignation;
    b) ceasing to be a resident of the state, county, or district from which elected;
    c) 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

20. The county surveyor, whether elected or appointed, can be removed by the probate judge for want of capacity. This cause of removal is in addition to the causes which apply to all public officers.

    O.C.G.A. §§ 36-7-15, 15-6-82

21. In the event of a vacancy in the office, the judge of the probate court must appoint a person to serve for the unexpired term of office and until his or her successor is duly elected and qualified.

    O.C.G.A. § 36-7-3 (b)

    Note:
    See O.C.G.A. § 36-7-3 (a) concerning filling the office when an election fails to fill the office.

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:

i. *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).*
ii. *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).*
iii. *A convicted felon who has had his or her civil rights restored is eligible to vote andhold public office. Op. Atty. Gen. U77- 43.*
iv. *The conviction of the crime of "having liquor" does not render a person disquali-fied from holding public office if at the time of commission such crime carried only misdemeanor punishment. Op. Atty. Gen. 67-26.*
v. *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).

vi. *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).*

vii. *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).*

viii. *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).*

ix. *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).*

x. *An indictment alone would not disqualify a person as a candidate for public office.Op. Atty. Gen. U68-102.*

xi. *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.*

xii. *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.*

xiii. *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

COUNTY TREASURER

Qualifications

1. Must have been a resident of the county in which seeking the office for 12 months priorto election or appointment.

   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 avowed 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 qualified voter.
3. Must be a citizen of the state and must have attained the age of 21 years, provided, however, that upon passage of appropriate local ordinances, citizens of this state who are otherwise qualified and are at least 18 years of age shall be eligible to hold any county office, except offices of a judicial nature.

   O.C.G.A. §§ 45-2-1, 36-6 -1

   Note:
   O.C.G.A. § 36-6-1 (b) provides only that county treasurers shall be "elected and commissioned in the same manner and at the same time" as clerks of the superior courts. See O.C.G.A. § 15-6 -50.

Term of Office and Election

4. Term of office is four years.
5. Elected by the qualified voters of the county.
6. Elected in the general election held on the Tuesday following the first Monday in November immediately preceding the expiration of the term of office.

   Ga. Const. Art. 9, § 1, ¶ 3 (See Note under item 3)
   O.C.G.A. §§ 21-2-9, 21-2-2 (15), 36 -6-1

7. A candidate for county treasurer 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:

   i. *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).*
   ii. *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.*
   iii. *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.*
   iv. *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 the statute. Rowland v. Tattnall County 260 Ga. 109, 390 S.E.2d 217 (1990).

8. 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,
        i. 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
        ii. 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

9. 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, judge of superior court, district attorney, any elected county officer, and any elected municipal officer.

    O.C.G.A. § 21-2-136

10. 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. § 21-2-27

Bond Requirements

11.
    a) Within 30 days after election or appointment, the county treasurer shall give bond payable to the county governing authority with securities approved by such authority, in a sum which in its judgment will be ample to protect the county from any loss. O.C.G.A. § 36-6- 4
    b) The bond shall be approved by the county governing authority, filed in its office, and recorded by it. O.C.G.A. § 36-6-5 (a). See also § 45- 4-13, requiring the bond to be approved by the judge of the probate court and filed and recorded in the office of the judge of the probate court.

c) The bond must be filed by the first day of January after the election. O.C.G.A. § 45- 4-14
d) The office of county treasurer shall be vacated upon failure to give bond within the time prescribed by the laws and constitution. No official acts shall be performed until the bond is approved and filed as required. O.C.G.A. §§ 45-5-51 (6), 45- 4-22 (a)

Oath of Office

12. Before entering on the duties of office, the treasurer must, in addition to oaths required of all public officers, take the following oath:

    "I, _____ , do swear I will faithfully collect, disburse, and account for all moneys or other effects of the county, and otherwise faithfully discharge all the duties required of me by law as county treasurer. So help me God."

    O.C.G.A. § 36-6-3

    Note:
    The oath of office must be entered in the minutes of the county governing authority and filed in its office. See O.C.G.A. § 36 -6 -5 (a).

13. 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.

14. 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:
    i. 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.
    ii. 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

15. All elected or appointed offices are deemed vacant upon the incumbent's
    a) death or resignation;
    b) ceasing to be a resident of the state, county, or district from which elected;
    c) 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

16. 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. 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. §§ 36-6-25, 15-6-54, 15-6-56

    Annotation:
    A vacancy in the office of treasurer is to be filled pursuant to O.C.G.A. §§ 15-6 -54 and 15-6-56. Op. Atty. Gen. 81-87.

General Disqualifications

17. 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:

i. *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).*

ii. *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).*

iii. *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.*

iv. *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.*

v. *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).

vi. *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).*

vii. *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).*

viii. *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).*

ix. *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).*

x. *An indictment alone would not disqualify a person as a candidate for public office. Op. Atty. Gen. U68-102.*

xi. *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.*

xii. *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.*

xiii. *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.*

18. 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

19. 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

20. The county treasurer may be removed from office by the judge of the superior court for any sufficient cause, including incapacity or misbehavior in office. Failure of a county treasurer to render an accounting of county funds upon request of the county governing authority will result in suspension of the treasurer and appointment of a temporary treasurer pending removal.

    O.C.G.A. §§ 36-6-24, 15-6-82

    Annotation:

    The judge of the superior court can remove the current county treasurer from office after a jury finding of incapacity. The judge of the probate court can appoint a qualified person to carry out the duties of county treasurer if an incapacity has been established. If the vacancy is to last more than 6 months, a special election should be called to fill the unexpired term. Op. Atty. Gen. U85-30.

MEMBER, COUNTY BOARD OF EDUCATION

Qualifications

1. Must be a citizen of this state.
2. Must have been a resident of the county from which elected for 12 months immediately preceding election.
3. Must be a qualified voter.

   O.C.G.A. § 45-2-1

4. Must reside within the school district in which he or she seeks election and in the election district which he or she represents.

   Ga. Const. Art. 8, § 5, ¶ 2
   O.C.G.A. § 20-2-51

   Cross-Reference:
   Art. 8, § 5, ¶ 2, and O.C.G.A. § 20-2-51 establish county school districts under the management and control of a county board of education.

   Annotation:
   Residency requirements for the election of local school board members cannot be established by local board bylaws. Op. Atty. Gen. U97-25.

5. Must not be
   a) employed by or serving on the governing board of any private educational body or institution;
   b) employed by the local board of education and be on the same board;
   c) employed by either the State Department of Education or the State Board of Education.

   O.C.G.A. § 20-2-51 (c)

Term of Office and Election

6. Term of office is four years unless otherwise provided by local act or constitutional amendment.

   Ga. Const. Art. 8, § 5, ¶ 2
   O.C.G.A. § 20-2-52

7. Elected in the general election held on Tuesday following the first Monday in November in each even-numbered year next preceding the expiration of the term of office.

   O.C.G.A. § 21-2-9

8. Elected in partisan elections unless nonpartisan elections are provided for by local law.
   O.C.G.A. §§ 20-2-56, 21-2-139
9. A candidate for member of a county board of education 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:

i. *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).*

ii. *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.*

iii. *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 the ex-officio position held by the incumbent. Op. Atty. Gen. 70-53.*

iv. *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).*

10. 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,
        i. 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
        ii. 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

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, judge of superior court, district attorney, any elected county officer, and any elected municipal officer.

    O.C.G.A. § 21-2-136

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

O.C.G.A. § 21-2-7

Oath of Office

13. 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.

14. 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:
    i. 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.
    ii. 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

15. When a member of a local board of education moves his or her domicile from the district which that person represents, such person shall cease to be a member of the local board of education.

    O.C.G.A. § 20-2-51 (b)

16. All elected or appointed offices are deemed vacant upon the incumbent's
    a) death or resignation;
    b) ceasing to be a resident of the state, county, or district from which elected;
    c) 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

17. Methods of filling a vacancy:
    a) Except as otherwise provided by local law, a vacancy occurring more than 90 days prior to a general election preceding the general election at which a successor will be elected for a new full term of office will be filled for the unexpired term at a special election held at the time of the next general election. The remaining members of the board of education shall select a qualified person to serve until such special election.
    b) If the vacancy occurs 90 days or less before the date of a general election preceding the next general election at which a successor will be elected for a new full term of office, the remaining members of the board will appoint a person to serve for the remainder of the unexpired term.

    O.C.G.A. § 20-2-54.1

General Disqualifications

18. 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:

i. *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 proce-dures. Summerour v. Cartrett, 220 Ga. 31, 136 S.E.2d 724 (1964).*

ii. *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).*

iii. *A convicted felon who has had his or her civil rights restored is eligible to vote andhold public office. Op. Atty. Gen. U77- 43.*

iv. *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.*

v. *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).*

vi. *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).

vii. *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).*

viii. *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).*

ix. *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).*

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xi. *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 appoint-ment of honor or trust even if the sentence has been completed. Op. Atty. 83-33.*

xii. *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.*

xiii. *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.*

19. 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

JUDGE OF JUVENILE COURT

Qualifications

1. Must have attained the age of 30 years at the time of appointment.
2. Must have been a citizen of the state for three years at the time of appointment.
3. Must reside in the geographical area in which selected to serve.
4. Must, when appointed, have been admitted to practice of law for five years.

   Ga. Const. Art. 6, § 7, ¶ 2
   O.C.G.A. § 5-11-18 (e)

Term of Office

5. Appointed by the judge or judges of the superior court in each circuit, unless the election of the juvenile court judge is otherwise provided for by a local act. (Only one juvenile court judge is currently elected.) If no person is appointed as juvenile court judge for the circuit, the judges of the circuit assume the duties of the juvenile court judge.

   O.C.G.A. § 15-11-18 (b)

6. Term of office is four years.
   O.C.G.A. § 15-11-18 (d)(1)

Oath of Office

7. 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

   Notes:
   a) 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.
   b) The federal constitution requires that the judicial officers of the state be bound by oath or affirmation to support the federal constitution. See U.S. Const., Art. 6, § 3.

Vacancies in and Succession to Office

8. Any judge may be removed, suspended, or otherwise disciplined for
   a) willful misconduct in office;
   b) willful and persistent failure to perform the duties of office;
   c) habitual intemperance;

d) conviction of a crime involving moral turpitude;
e) or for conduct prejudicial to the administration of justice which brings the judicial office into disrespect.

Any judge may be retired for disability which constitutes a serious and likely permanent interference with the performance of the duties of office. The Supreme Court shall adopt rules of implementation.

Ga. Const. Art. 6, § 7, ¶ 7

Annotation:

The Supreme Court possesses the authority to regulate the conduct of judges—including conduct during judicial elections. Judicial Qualifications Commission v. Lowenstein, 252 Ga. 432, 314 S.E.2d 107 (1984).

9. Vacancies are filled by appointment of the judges of the superior courts in the same manner as original appointments.

Ga. Const. Art. 6, § 7, ¶ 3
O.C.G.A. § 15-11-18

General Disqualifications

10. 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 per-son, 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 are constitutionally disqualified for any cause.

    Ga. Const. Art. 2, § 2, ¶ 3
    O.C.G.A. § 45-2-1, O.C.G.A. § 21-2-8

Annotations:

i. 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).

ii. *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).*

iii. *A convicted felon who has had his civil rights restored is eligible to vote and hold public office. Op. Atty. Gen. U77- 43.*

iv. *The conviction of the crime of "having liquor" does not render a person disquali-fied from holding public office if at the time of commission such crime carried only misdemeanor punishment. Op. Atty. Gen. 67-26.*

v. *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).*

vi. *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).*

vii. *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).*

viii. *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).*

ix. *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).*

x. *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.*

xi. *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.*

xii. *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.*

11. 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 administration of the office of the indicted judge, the state constitution provides a means by which such judge may be suspended, with pay, pending the final disposition of the case or until the expiration of the judge'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 judge 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.

    Ga. Const. Art. 6, § 7, ¶ 7
    O.C.G.A. § 45-5-2

12. Full-time juvenile court judges may not engage in any practice of law outside their role as judge. Part-time juvenile court judges may not engage directly or indirectly in the practice of law in their own name or in the name of another as a partner or in any matter in their own court or in any matter of which their court has or had pending jurisdiction. All judges are prohibited from giving any advice or counsel to any person on any matter which has arisen directly or indirectly in their own court.

    O.C.G.A. § 15-11-18 (g)

COUNTY MANAGER /COUNTY ADMINISTRATOR IN A COMMISSION-MANAGER FORM OF GOVERNMENT

Qualifications

The governing authority of any county of this state or the General Assembly may create in and for those counties in which it deems necessary or advisable the office of county manager and may vest in such office powers, duties, and responsibilities of an administrative nature. The qualifications, method of selection, appointment, compensation, tenure, and such other related matters pertaining to the office of county manager shall be provided for by the governing authority of the county.

O.C.G.A. § 36-5-22

Annotations:

i. *This statute is constitutional and does not conflict with the County Home Rule provisions of the Georgia Constitution. Gray v. Dixon, 249 Ga. 159, 289 S.E.2d 237 (1982).*
ii. *Any attempt to confer "executive powers" on the office of county manager would be an "action affecting the form of the county governing authority" in violation of Georgia Constitution, Art. 9, § 3 , ¶ 1. Gray v. Dixon, 249 Ga. 159, 289 S.E.2d 237 (1982).*
iii. *A board of commissioners may transfer the authority to hire, supervise, and fire employees from the chairman to itself and hire an administrative assistant for the board without affecting the office of chairperson or the form of county government in violation of the constitution or state laws. Krieger v. Walton County Board of Commissioners, 269 Ga. 278, 506 S.E.2d 366 (1998).*

Note:
For the qualifications and requirements for the office of county commissioner, see "County Commissioner" in this publication.

COUNTY SUPERINTENDENT OF SCHOOLS

Qualifications

1. Must be of good moral character.
2. Must be a citizen of the state and must have attained the age of 21 years; provided, however, that upon passage of appropriate local ordinances, persons who are otherwise qualified and are at least 18 years of age shall be eligible to hold any county office, except offices of a judicial nature.

   O.C.G.A. § 45-2-1

   Annotation:

   The residency requirement refers to domicile. There must be either the tacit or 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 avowed 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).

3. Must possess acceptable business or management experience as specified by the Professional Standards Commission or the minimum valid certificate or letter of eligibility for such certificate as required by the Professional Standards Commission.
4. Additional qualifications as prescribed by local law or policies of the board for that school district, not inconsistent with general law.

   O.C.G.A. § 20-2-101

Appointment

5. Superintendents of each school system are employed by the local board of education under written contracts of at least one year but not more than three years.

   O.C.G.A. § 20-2-101

Bond Requirements

6. The county superintendent of schools must give a bond with an approved surety company payable to the county board of education in the amount to be decided by the board. The bond must be filed with the judge of the probate court of the county and recorded in his or her records. The county superintendent is required to send a certified copy of the bond to the State Superintendent of Schools, which copy shall be recorded and kept on file at the State Board of Education.

   O.C.G.A. § 20-2-104

   Annotation:

   The bond of county school superintendent is an official bond and, when conditioned upon faithful discharge of duties of his office, is for the benefit of any person injured. Citizens Bank of Colquitt v. American Surety Co. of New York, 174 Ga. 852, 164 S.E. 817 (1932)

Oath of Office

7. Before entering upon the discharge of his or her official duties, the county superintendent of schools shall take and subscribe to the same oaths as required by other officers of the state.

   O.C.G.A. § 20-2-103

8. 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. § 20-2-103

   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.

9. 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 required for all persons who are employed by and are on the payroll of school districts and local educational systems throughout the entire state.

   O.C.G.A. §§ 45-3-11, 45-3-13

   Annotations:
   i. 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.
   ii. 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

10. At any time during the 12 months immediately preceding expiration of a superintendent's contract or when a vacancy otherwise occurs, the local board of education may appoint and employ a successor notwithstanding that the terms of some or all board members will expire before the employment of the superintendent begins.

    O.C.G.A. § 20-2-101

General Disqualifications

11. 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 are constitutionally disqualified for any cause.

Ga. Const. Art. 2, § 2, ¶ 3
O.C.G.A. § 45-2-1

Annotations:

i. *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).*
ii. *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).*
iii. *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.*
iv. *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.*
v. *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).

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viii. *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.*

12. Suspension or 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

13. 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

APPENDIX A

The Georgia Ethics in Government Act

The following is a very brief summary of the major requirements of this Act as they apply to candidates for public office. For more information on this Act, contact the State Ethics Commission.

1. Applies to all state, county, and municipal elections.
O.C.G.A. § 21-5-2

2. Creates a five-member State Ethics Commission empowered to investigate complaints alleging violations of the Ethics in Government Act and to institute and prosecute actions in the superior courts to enjoin or restrain violations of the Act.
O.C.G.A. §§ 21-5- 4, 21-5-6

3. Requires that all contributions must be made directly to either a candidate or a campaign committee.

4. Prohibits the making and acceptance of anonymous contributions.

5. Prohibits direct or indirect contributions to any candidate for an elected executive office by any person who is required to be licensed by that official or by a board under the jurisdiction of that official.

6. Prohibits public agencies and authorities of the state, county, and municipal governments from making contributions to candidates, campaign committees, political action committees, or political organizations.

7. Prohibits members of the General Assembly from accepting contributions while the legislature is in session.
O.C.G.A. §§ 21-5-30, 21-5-30.1, 21-5-30.2, 21-5-35

8. Requires all candidates and campaign committees to maintain and file detailed reports of all contributions received directly or indirectly.
O.C.G.A. §§ 21-5-32, 21-5-34

9. Requires that contributions be used only to defray ordinary and necessary expenses of the campaign or ordinary or necessary expenses of fulfilling or retaining public office.

10. Prohibits the use of funds from a previous campaign to finance a future campaign for a different office. Prohibits a candidate from retaining contributions for his or her personal use.
O.C.G.A. § 21-5-33

11. Requires disclosure of personal financial information by candidates.
O.C.G.A. § 21-5-50

12. Imposes contribution limits on amounts that may be contributed to candidates or their committees.
O.C.G.A. §§ 21-5- 40-21-5- 44

13. Prohibits public utility corporations from making any contribution to a political campaign.
O.C.G.A. § 21-5-30 (f)