DE 88-41 - September 29, 1988

Computation of Time
Section 100.361(1)(f), (2), F.S.

To: Mr. Michael A. Kramer, City Attorney, City of Longwood, 175 West Warren Avenue, Longwood, Florida 32750-4197

Prepared by: Division of Elections

This is in reference to your request for an advisory opinion on the computation of time periods for municipal recall, Section 100.361(1)(f), and (2), Florida Statutes. You are the City Attorney for Longwood, Florida and the Division of Elections has authority under Section 106.23(2), Florida Statutes, to issue an advisory opinion to you relating to the Florida Election Code, Chapters 97-106, Florida Statutes.

You asked the following questions:

> 1. Does the five day period referred to in Section 100.361(1)(f) and (2), Florida Statutes, refer to any days or just working days?

> 2. Is there a set rule for the computation of time?

Section 100.361(1)(f), Florida Statutes, which deals with municipal recall, states in part:

> Within 5 days after service, the person sought to be recalled may file with the city auditor or clerk, or his equivalent, a defensive statement of not more than 200 words. The city auditor or clerk or his equivalent, shall, within 5 days, prepare a sufficient number of ... counterparts ... and deliver them to the person who has been designated as chairman of the committee and take his receipt therefor.

In interpreting the statutory meaning of "five days," we may look to the Florida Rules of Civil Procedure, Rule l.090(a), which provides in part:

> The last day of the period so computed shall be included unless it is a Saturday, Sunday or legal holiday in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

However, the Rules of Civil Procedure govern only court proceedings and are used by the Division only as general guidelines for statutory interpretation. Fla. R. Civ. P. l.0l0. Statutes can set forth more specific requirements. For example, Section 106.07, Florida Statutes, provides for the filing of

campaign reports. This section specifically provides that when a campaign report is late, a fine will be levied for <u>each day</u> the report is late. Intermediate Saturdays, Sundays and legal holidays are included in the computation.

The statute specifically provides that such reports must be filed by 5 p.m. of the designated due date, although a report postmarked on or before the due date or for which a Certificate of Mailing is obtained from the U.S. Postal Service which bears a date on or before the due date is proof of mailing in a timely fashion.

Quarterly campaign reports are statutorily due on the tenth day of the month following a quarter. When this date previously fell on a Sunday, the report was considered late if it were postmarked after the tenth since the U.S. Postal Service postmarked mail on Sundays. However, a recent change in policy discontinued Sunday postmarks making it impossible for reports to be "filed" on Sunday.

In reliance on a Florida Supreme Court case, <u>Stockslager v. Daly Aluminum Products, Inc.</u>, 246 So.2d 97 (1971), the Division instructed filing officers that candidates and committees are not to be fined when a statutory filing date falls on a Sunday and the report is postmarked the following day as it was impossible for the campaign report to be postmarked on Sunday.

In answer to your first question, does the five-day period refer to any days or just working days, since the statute does not specifically include Saturdays, Sundays and holidays, as does Section 106.07, Florida Statutes, we opine that Saturdays, Sundays and legal holidays should be excluded in the five-day computation.

In reference to your second question, is there a set rule for the computation of time, no there is not.

SUMMARY

The five-day period referred to in Section 100.361(1)(f), and (2), Florida Statutes, must be working days with Saturdays, Sundays and holidays excluded from the computation.