Rescinded in part, see DE 03-05

DE 97-06 - December 15, 1997

Rescinding DE 76-16, 78-2, 88-32, 90-16, and 94-7

TO: The Honorable Dee Brown, President, Florida State Association of Supervisors of Elections, 402 South East Twenty Fifth Avenue, Ocala, Florida 34478-0289

Prepared by: Division of Elections

This is in response to your request for an advisory opinion regarding a number of Division opinions that may be out of date or need reexamination. The Division is authorized to provide advisory opinions pursuant to section 106.23(2), Florida Statutes, when requested by any supervisor of elections.

Several supervisors have expressed concern about the continuing applicability of DE 78-2, 88-32, 90-16, 90-33, 91-1, and 94-7. For the reasons that follow, the Division hereby rescinds DE 76-16, 78-2, 88-32, 90-16, and 94-7; however, DE 90-33 and 91-1 remain in effect. For purposes of discussion, we will address each opinion separately.

Three of the above opinions have been superseded by subsequent statutory amendments.

DE 76-16: This opinion concerned whether applications for absentee ballots were public records that must be made available for public inspection under Chapter 119, Florida Statutes. The Division opined in 76-16 that such applications were public records. Section 101.62(3), Florida Statutes (Supp. 1996), with a number of listed exceptions, now provides that such requests are confidential. Accordingly, DE 76-16 is rescinded.

DE 78-2: Former section 98.211, Florida Statutes (1977), limited the information that could be made available to the public to a voter‘s name, party affiliation, address, and precinct number. Section 98.095, Florida Statutes (1995), now provides that all information which is maintained in the registration books by a supervisor must be furnished upon request to those persons who are eligible to receive it. Thus, it is now irrelevant that the request for information is age specific, as was the case in DE 78-2. According, DE 78-2 is rescinded.

DE 88-32: The essence of this opinion was that an absentee ballot may be counted if it has been witnessed, even though the witnesses failed to provide their addresses, so long as there is no evidence of fraud. This opinion has been superseded by section 101.68(2)(c)1., Florida Statutes (Supp. 1996), which states, "[A]n absentee ballot shall be considered illegal if it does not include the signature of the elector, as shown by the registration records, and the signature and address of an attesting witness." (emphasis added.) Accordingly, DE 88-32 is rescinded.

DE 90-16: We held that, as a service to members of the media, a supervisor of elections may provide voter registration information over the telephone pursuant to section 98.095, Florida Statutes, given

that it was the same information available to such media if they were to personally examine the records. In retrospect, we see no statutory basis for treating the media any differently from any other member of the public who does not fall within the category of persons listed in section 98.095(2), Florida Statutes. Accordingly, we hereby rescind DE 90-16.

DE 94-07: We held that candidates could make unlimited purchases by personal check as long as they intended for such expenditures to be reported as in-kind contributions. The opinion also stated that the "candidate cannot make such purchases as a campaign expenditure except by means of a campaign check... made through the candidate's campaign treasurer." This reasoning has resulted in some confusion as to when and under what circumstances a campaign expenditure or in-kind contribution occurs. Therefore, we rescind DE 94-07. Except for petty cash expenditures allowed under section 106.12, Florida Statutes (1995), the only way that a candidate may make a campaign expenditure is by means of a bank check drawn on the primary campaign depository, pursuant to section 106.11(1), Florida Statutes (1995). Having said this, we recognize the applicability of section 106.07(4)(a)7., Florida Statutes (1995), which requires that candidates report any reimbursements of authorized expenses from their campaign accounts to themselves.

We believe the purpose of this provision is to cover rare occurrences where the campaign must make an expenditure, but the campaign check book is not available. Such a situation could occur when a bill must be paid and the campaign has not received its first order of checks from the bank, or where, during the course of campaign travel, tolls or other miscellaneous expenses must be paid in cash and the candidate has failed to take money out of his petty cash fund for such purposes. Likewise, while candidates may make purchases with personal funds and report them as in-kind contributions, we do not believe that a candidate may make continuous, unlimited expenditures from his personal funds, donate the items to the campaign, and then report them as in-kind contributions from the candidate, if it is his intent to avoid disclosing his expenditures. To do so frustrates the purpose of the campaign finance law which is the full disclosure of campaign expenditures. Accordingly, DE 94-07 is rescinded and superseded by this opinion.

Regarding DE 90-33 and 91-1, these opinions remain valid and binding until amended or revoked by the Division. *Smith v. Crawford*, 645 So. 2d 513 (Fla. 1st DCA 1994). As we opined in DE 90-33, we continue to believe that the city clerk is capable of examining the record and making a factual determination as to whether an elected city official has served one-fourth of his term. With regard to DE 91-1, we note that the Division has recently amended its petition form to include a check-off box to indicate whether the person signing the petition wishes to change his address.

SUMMARY

Florida Division of Elections Opinions DE 76-16, 78-2, 88-32, 90-16, and 94-7 are hereby rescinded. DE 90-33 and 91-1 remain in effect. A candidate may not make unlimited personal expenditures and report them as reimbursements. Likewise, a candidate may not make unlimited personal expenditures, donate purchased items to his campaign and then report them as in-kind contributions when his intent in doing so is to avoid full disclosure of his expenditures.