

DE 02-15 - October 14, 2002

**Use of Campaign Funds for Legal Expenses Associated with Contesting an Election
§ 102.168, 106.011(3)(a), 106.011(4), 106.11(5), Florida Statutes**

To: The Honorable Renier Diaz de la Portilla, State Representative, Post Office Box 3800, Miami, Florida 33245-3800

Prepared by: Division of Elections

Dear Representative Diaz de la Portilla:

This is in response to your request for an advisory opinion regarding the use of campaign funds to pay for legal expenses related to your legal contest of the September 10, 2002 Primary Election in which you were a Republican candidate for the office of State Representative, House District 115. You are a candidate and pursuant to section 106.23(2), Florida Statutes, the Division of Elections has authority to issue an opinion to you.

You state in your letter that on September 27, 2002 you filed a complaint in the 11th Judicial Circuit Court contesting the certified results of the September 10, 2002 Primary Election as they relate to your candidacy as a Republican candidate for State Representative, District 115. You ask several questions relating to the use of your campaign funds both during the period following the September 10, 2002 Primary Election but prior to filing your contest on September 27, 2002 and the period after the filing of the contest of the election.

A primary election for the office of State Representative, District 115 was held on September 10, 2002. You were a qualified candidate on that ballot. On September 17, 2002, pursuant to section 102.112(2), Florida Statutes, the local canvassing board through the Supervisor of Elections certified the results of the election to the Division of Elections. On September 18, 2002 the Election Canvassing Commission certified the results of the primary election. Mr. Juan-Carlos Planas was certified as the winner of the Republican Party primary race for State Representative, District 115. Pursuant to Section 102.168, Florida Statutes, as an unsuccessful candidate, you filed a contest of the election.

The Florida Legislature, through section 102.168, Florida Statutes, has devised a mechanism by which unsuccessful candidates for office may contest the certified outcome of their race. Such contests must be filed within 10 days of the certification of the election results. These cases are handled in an expeditious manner by the courts and the court, if the contesting party is successful, may fashion various remedies, including, but not limited to, ordering the holding of another election with regard to a particular race or declaring a different winner.

Chapter 106, Florida Statutes, through various sections, outlines the procedures under which a candidate for office can receive campaign contributions and make expenditures from their duly

established campaign accounts. In addition, Chapter 106 also outlines the purposes for which campaign funds can be spent.

Section 106.11, Florida Statutes, allows candidates to deposit contributions received into and make expenditures from the campaign accounts. Pursuant to section 106.011(4), Florida Statutes, an "expenditure" is, "a purchase, payment, distribution, loan, advance, transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit, or gift of money or anything of value made for the purpose of influencing the results of an election."

A "contribution" is defined in section 106.011(3)(a), Florida Statutes, as, "a gift, subscription, conveyance, deposit, loan, payment, or distribution of money or anything of value, including contributions in kind having an attributable monetary value in any form, made for the purpose of influencing the results of an election."

Chapter 106, Florida Statutes, does not define an "eliminated candidate." However, section 106.11(5), Florida Statutes, provides that:

(5) A candidate who withdraws his or her candidacy, becomes an unopposed candidate, or is eliminated as a candidate or elected to office may expend funds from the campaign account to:

(a) Purchase "thank you" advertising for up to 75 days after he or she withdraws, becomes unopposed, or is eliminated or elected.

(b) Pay for items which were obligated before he or she withdrew, became unopposed, or was eliminated or elected.

(c) Pay for expenditures necessary to close down the campaign office and to prepare final campaign reports.

(d) Dispose of surplus funds as provided in s. 106.141.

The determination of the correct election results relating to your race goes to the very heart of your candidacy. Because section 102.168, Florida Statutes, provides a timely legal process by which an unsuccessful candidate for office can contest the certified results of their race, it was clearly contemplated by the Legislature that limited circumstances might occur, the types of which are specifically outlined in statute, which could cause certified election results as to a particular candidate's race to be called into question. The contest provision then allows the candidate to seek review of the election results by a court of law and obtain a final determination of the validity of those results. It seems logical then to conclude that the Legislature did not intend for a candidate to be considered to be "eliminated" for purposes of Chapter 106 until after the conclusion of any contest action that they were lawfully permitted to file under section 102.168, Florida Statutes.

With all of this in mind, let us now address your specific questions. They are as follows:

1) As a defeated candidate following the September 10th election, but prior to the filing of the September 27th complaint, what were my restrictions as to the use of my campaign funds?

2) As a losing candidate contesting the certified election results after September 27th, what are my restrictions as they pertain to the following:

- a) My ability to loan my campaign funds for the use of campaign activities?
- b) My ability to collect contributions for the use of campaign related activity?
- c) My ability to loan my campaign funds for the use of legal costs related to my election complaint?
- d) My ability to collect contributions for the use of legal costs related to my election contest?

As to question 1, normally election day marks the point after which campaign funds not spent or obligated may not be expended for purposes other than those specified in statute. Therefore, you would be limited during the period following the September 10, 2002 election through the actual filing of your contest of the election to those types of expenditures permitted under section 106.11(5), Florida Statutes.

As to question 2, by exercising your right as a candidate by filing the contest of election on September 27, 2002, you effectively removed your candidacy from the definition of "eliminated" for the purposes of Chapter 106, Florida Statutes, until the outcome of your contest of the election is determined. During the pendency of the contest of the election, you would be limited to expenditures from your campaign account solely for the purposes of that legal action and for paying for any items obligated on or before election day. As to contributions, you would be able to accept contributions, subject to the limitations contained in section 106.08, Florida Statutes, for the primary election, but only for the very narrow purpose of paying for the legal fees and costs associated with your contest of the election results. This would include contributions or loans made by you personally to your campaign during this time. You would also need to report any expenditures from or contributions to your campaign during that time.

SUMMARY

In general, a candidate can only expend funds from their campaign account after election day for the type of expenditures permitted under section 106.11(5), Florida Statutes. However, a candidate who timely files a contest of the election pursuant to section 102.168, Florida Statutes, is also permitted to expend funds from the campaign account for legal fees and costs associated with litigating the contest of the election. During the period of the legal contest, a candidate may also accept contributions to their campaign account for the sole purpose of paying for the legal fees and costs associated with that litigation.

Sincerely,

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Director, Division of Elections

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