



## FLORIDA DEPARTMENT *of* STATE

**RICK SCOTT**  
Governor

**KEN DETZNER**  
Secretary of State

January 22, 2013

The Honorable Grady Judd  
Sheriff, Polk County  
P.O. Box 207  
Highland City, Florida 33846

RE: DE 13-01 Campaign Financing; Qualifying Fees – Disposition of surplus funds to pay election assessment -- §§ 99.092(1), 99.095(1), and 106.141(6), Florida Statutes

Dear Sheriff Judd:

This letter responds to your request for an advisory opinion. As a recent candidate, who was re-elected as the Polk County Sheriff, you have a question regarding the disposition of your surplus campaign funds. The Division of Elections has the authority to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2012).

The background for your request is that when seeking to qualify as a candidate you used the petition method under section 99.095, Florida Statutes (2012), to have your qualifying fee waived. Section 99.092(1), Florida Statutes (2012), defines “qualifying fee” as consisting of both a filing fee and an election assessment and indicates each person, “except a person seeking to qualify by the petition process pursuant to s. 99.095 and except a person seeking to qualify as a write-in candidate,” must pay the qualifying fee to qualify for the office being sought. Section 99.095(1) also provides, “A person who seeks to qualify as a candidate for any office and who meets the petition requirements of this section is not required to pay the qualifying fee or party assessment required by this chapter.” (Because the Polk County Sheriff is a non-partisan office, no party assessment exists for sheriff candidates.) On the other hand, section 106.141(6), Florida Statutes (2012) [“Disposition of surplus funds by candidates”], provides in relevant part:

*Prior to disposing of funds pursuant to subsection (4), any candidate who filed an oath stating that he or she was unable to pay the ... fee for verification of petition*

### Division of Elections

R.A. Gray Bldg., Rm. 316 • 500 S Bronough St. • Tallahassee, Florida 32399-0250  
Telephone: (850) 245-6200 • Facsimile: (850) 245-6217 elections.myflorida.com  
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signatures without imposing an undue burden on his or her personal resources otherwise available to him or her ..., or *who qualified by the petition process and was not required to pay an election assessment, shall reimburse the state or local governmental entity, whichever is applicable for such waived assessment* or fee or both. Such funds shall be made first for the cost of petition verification and then, if funds are remaining, for the amount of the election assessment. If there are insufficient funds in the account to pay the full amount of either the assessment or the fee or both, the remaining funds shall be disbursed in the above manner until no funds remain. All funds disbursed pursuant to this subsection shall be remitted to the qualifying officer. [*Emphasis supplied.*]

In your situation, you did not file an undue burden oath for petition verification and you paid the 10 cents per petition signature verification fee required by section 99.097(4), Florida Statutes (2012); however, by satisfying the petition process, you were not required to pay the election assessment in order to qualify as a candidate. You believe that the requirement to reimburse the waived election assessment in Chapter 106 conflicts with what you regard as the clear language in Chapter 99 that a person who satisfies the petition process “is not required to pay the qualifying fee,” which would include not paying the election assessment.

Based upon the foregoing, you essentially ask the following question: Must a candidate who uses the petition process to qualify as a candidate, pays the signature verification fees, and has surplus campaign funds reimburse the applicable government entity for the waived election assessment?

The short answer to your inquiry is “Yes.”

In interpreting the Florida Election Code, one is to read the entire election code as a cohesive whole with the provisions being read in *pari materia*, or in harmony with another.<sup>1</sup> “A statutory provision will not be construed in such a way that it renders meaningless or absurd any other statutory provision.”<sup>2</sup> When the provisions are viewed in *pari materia*, no conflict actually exists between the two chapters of the Florida Statutes when they are viewed with respect to the actions being regulated and the substance and timing of those actions. Chapter 99, Florida Statutes (2012), as it relates to your inquiry about paying or not paying the qualifying fee, concerns the requirements for a person “seeking to qualify”<sup>3</sup> or who “seeks to qualify;”<sup>4</sup> whereas, the

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<sup>1</sup> *Palm Beach County Canvassing Bd. v. Harris*, 772 So. 2d. 1273, 1287-88 (Fla. 2000).

<sup>2</sup> *Id.* at 1287.

<sup>3</sup> § 99.092(1), Fla. Stat. (2012).

<sup>4</sup> § 99.095(1), Fla. Stat. (2012).

applicable Chapter 106 provision concerns campaign finance requirements for a person who no longer is a candidate and how the former candidate is to dispose of funds from his or her campaign account. If the petition process is satisfied, a candidate is eligible to qualify as a candidate without paying a qualifying fee or party assessment "required by this chapter"<sup>5</sup> (meaning Chapter 99). However, once a candidate withdraws, becomes unopposed, is eliminated, or is elected, Chapter 106 mandates how the candidate must dispose of surplus campaign funds remaining in the campaign account. One of the Chapter 106 requirements is for the former candidate to use any available surplus funds to reimburse the applicable government entity for the election assessment that had been waived by a candidate satisfying the candidate petition process.<sup>6</sup> By providing funds to reimburse the government entity for the election assessment that had been waived when the candidate sought to qualify, the candidate is not then paying the election assessment as required by Chapter 99 *in order to qualify*. The former candidate is no longer "seeking to qualify" when he or she pays the qualifying officer a reimbursement for the election assessment when disposing of surplus campaign funds; instead, the former candidate is merely complying with the statutory mandate on how to dispose of surplus campaign funds required by Chapter 106. Therefore, by giving effect to what occurs when a person seeks to qualify as a candidate and what occurs when the candidate is no longer a candidate, each statute can stand alone and each does not conflict with the other and the intent of each statute can be honored. In essence, the petition process within Chapter 99 allows a candidate to avoid paying the qualifying fee upfront, but if surplus funds are available after the campaign has ended, Chapter 106's after-the-fact requirement for the former candidate to reimburse the previously waived election assessment has no impact on the candidate's earlier attempt to qualify for the office.

Furthermore, the election assessment as part of the qualifying fee first appeared in statute in 1990;<sup>7</sup> the requirement to use surplus funds to reimburse the waived election assessment subsequently appeared in statute in 1991.<sup>8</sup> So, even if a conflict existed between the statutes (which the Division does not believe is the case), rules of statutory construction provide that the later promulgated statute (the reimbursement provision) would prevail as the last expression of legislative intent.<sup>9</sup> Moreover, as indicated previously, rules of statutory construction dictate that, where possible, an interpretation is made that harmonizes any seemingly disparate provisions of law in order to give effect to all parts of the law.<sup>10</sup> This advisory opinion achieves such an interpretation. Rules of statutory construction also reflect that a legislature is presumed to not

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<sup>5</sup> *Id.*

<sup>6</sup> § 106.141(6), Fla. Stat. (2012).

<sup>7</sup> Ch. 89-338, § 8, Laws of Fla.

<sup>8</sup> Ch. 90-315, § 34, Laws of Fla.

<sup>9</sup> *J.M. v. Fla. Agency for Persons with Disabilities*, 938 So. 2d 535, 540 (Fla. 1st DCA 2006).

<sup>10</sup> *Farris v. Fla. Dep't of Children and Families*, 941 So. 2d 512, 513 (Fla. 1st DCA 2006)

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have intended to keep contradictory enactments in the statutes.<sup>11</sup> The bottom-line: Chapter 106's provision regarding reimbursement of the election assessment would control over any prior contradictory provisions in sections 99.092 or 99.095, Florida Statutes (2012).

Based upon the foregoing, the Division provides the following answer to your question: Despite a person using the petition process to qualify as a candidate and paying the signature verification fees for candidate's petitions, if the person has available surplus campaign funds when disposing of such funds pursuant to section 106.141(6), Florida Statutes (2012), the person must use the surplus funds to reimburse the applicable government entity for the election assessment which had been waived when the person sought to qualify as a candidate for office. If insufficient funds remain in the campaign account to pay the full amount of the election assessment, the funds shall be expended toward the assessment until no funds remain.<sup>12</sup>

#### SUMMARY

A person who uses the petition process to qualify as a candidate, pays the signature verification fees, and has available surplus campaign funds must reimburse the applicable government entity for the previously waived election assessment pursuant to section 106.141(6), Florida Statutes (2012). If insufficient funds remain in the campaign account to pay the full amount of the election assessment, the funds shall be expended toward the assessment until no funds remain.

Sincerely,



John Boynton  
Acting Director, Division of Elections  
Deputy Secretary of State for Administrative Services,  
Corporations and Elections

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<sup>11</sup> *Knowles v. Beverly Enterprises-Florida, Inc.*, 898 So. 2d 1, 9 (Fla. 2004).

<sup>12</sup> § 106.141(6), Fla. Stat. (2012).