

DE 78-45 - October 31, 1978

**Campaign Contributions, Deadline For Receipt.  
ss. 106.07, 106.08, F.S.; ch. 78-403, Laws Of Florida.**

*To: Harvey M. Alper, Esquire, Alper and Wack, 165 Whooping Loop, Tern Building — Crane's Roost, Altamonte Springs, Florida 32701*

*Prepared by: Division of Elections*

On behalf of a candidate for election to the School Board of Seminole County, your letter of October 16, 1978 requests an advisory opinion of this office in answer to the following question:

"Do Florida Statutes permit a candidate for office to accept contributions to such candidate's campaign within five days of an election in which election that specific candidate does not appear on the ballot?"

Your question is answered in the negative.

Section 106.08(2), F.S. (1977), as amended by s. 1, ch. 78-403, Laws of Florida, reads as follows:

"(2) Any contribution received by a candidate or the campaign treasurer or a deputy treasurer of a candidate or political committee on the day of any election or less than 5 days prior to the day of any election shall be returned by him to the person or political committee contributing it and shall not be used or expended by or on behalf of a candidate or political committee. Any contribution received by a candidate or the campaign treasurer or a deputy treasurer of a candidate after the date the candidate is defeated or elected to office, shall be returned to the person or political committee contributing it and shall not be used or expended by or on behalf of the candidate. Any contribution received by a political committee after the date of the general election shall be returned by it to the person or political committee contributing it and shall not be used or expended by or on behalf of the political committee. (1978 amendment underlined).

It is noteworthy that the law uses the broad term "any election" without any restriction in designating when it is applicable. However, a literal reading would create an absurd result as numerous elections occur throughout this state which have no relation to a candidate such as the one whom you represent. A look to other sections of the election code provides some guidance as to the interpretation to be given to the phrase describing the statute's application.

A properly qualified candidate whose name does not appear on the ballot (which is as a result of having no opposition), is deemed to still be participating in that election. See DE 78-44 (October 25, 1978); Op. Att'y Gen. Fla. 074-380 (December 20, 1974). The campaign financing law provides that a candidate without opposition (hence not on the ballot) may still accept contributions up to the statutory limit during the election time segment pertaining to that election, s. 106.08(1), F.S.

For example, in the case of a school board candidate such as here, a contribution up to \$1,000 may be accepted for the first primary election. Thereafter even though that candidate has no opposition in the second primary election, and is not actually on the ballot as a result, another \$1,000 may be accepted from the same contributor. The same is likewise true for the general election.

Though unopposed in a particular election and not printed on the ballot, a candidate must file a report with the appropriate officer detailing campaign contributions and expenditures since the last such report. This report is to be filed "on the Monday preceding the election, for a candidate who is unopposed in seeking nomination (or) election to any office." s. 106.07(1)(a), F.S. See DE 78-39 (September 12, 1978).

A candidate for state or county office may at most participate only in three elections: first primary; second primary election; and general election. It seems reasonable and the intent of the Legislature to apply the five day contribution cut-off before "any election" only to those elections in which a candidate participates. Such a reading of that phrase fulfills the intent of having all reports filed immediately prior to

an election to reflect the activity in that candidate's account and to prevent contributions so close to the time of the election as to not be reported until after the voters had made their decision. Instead, the Legislature made the decision to require reporting by all candidates in such a manner as to place information on all contributions received by all candidates prior to the election before the voters prior to election day.

No exception has been provided by the Legislature for unopposed candidates. Being that such candidates are considered to be participating in the election for the purpose of contribution limitations in s. 106.08(1), F.S., there appears to be no reason to read the following paragraph of that same section any differently. Accordingly, any candidate may not receive contributions after the fifth day preceding an election in which he or she participates regardless of whether or not the candidate's name actually appears on the ballot. For primary elections, the receipt of contributions may be resumed immediately subsequent to election day, provided the candidate has not withdrawn or been eliminated.

## **SUMMARY**

A candidate whose name does not appear on a ballot as a result of being unopposed in that election may not accept contributions less than five (5) days prior to that election.