

DE 80-04 - April 28, 1980

Financial Disclosure

To: Honorable Kathleen M. Burnette, Supervisor of Elections, Madison County Courthouse, Madison, Florida 32340

Prepared by: Division of Elections

This is in response to the following three questions posed by you in your January 18, 1980 request for an Advisory Opinion, pursuant to Section 106.23(2), Florida Statutes:

1. Is a candidate for elected constitutional office of my county required to file a full and public disclosure statement with the Secretary of State or with me when filing his or her qualifying papers?
2. Must an incumbent who has filed full and public disclosure with the Secretary of State on or before July 1 (pursuant to Article II, Section 8, Florida Constitution) also file a copy of that disclosure statement or another disclosure statement if he or she seeks to qualify as a candidate after July 1?
3. Are candidates for elected constitutional office within my county required to file both the statement of financial interests, under Section 99.012(6), Florida Statutes, and the full and public disclosure statement, under Article II, Section 8 of the Florida Constitution?

In response to your first question, a candidate for elected constitutional office in your county should file a full and public disclosure statement with you when filing his or her qualifying papers. You should then file a copy of that statement with the Secretary of State. This conclusion is based upon Sections 99.061(1) and 99.061(2), F.S., Article II, Section 8(h)(1) of the Florida Constitution, and the recent Florida Supreme Court decision Plante v. Smathers, 372 So. 2d 933 (Fla. 1979).

Section 99.061(1), F.S., states in part that candidates for federal, state or multicounty district office shall qualify with the Department of State. Section 99.061(2), F.S., states that candidates for a county office not covered by Section 99.061(1), F.S., shall qualify with the Supervisor of Elections of the county.

It is not so clear, however, where the candidates for elected constitutional office must file a full and public disclosure statement. The Florida Supreme Court, in Plante v. Smathers, addressed the question of when candidates for constitutional office must file a full and public disclosure statement, pursuant to Article II, Section 8 of the Florida Constitution. The Court held that candidates for elected constitutional office must file the full and public disclosure statement prior to or at the time they qualify. The Court did not address the question of where the statement must be filed. Nevertheless, the Courts' holding that such disclosure must be filed prior to or at the time candidates qualify necessarily implies that they must file where they qualify. Therefore, candidates for elected constitutional office that qualify with you should file the full and public disclosure statement with you, and candidates that

qualify with the Secretary of State should file the full and public disclosure form with his office.

The necessity of your sending to the Secretary of State a copy of the full and public disclosure statement filed by candidates for elected constitutional office that qualify with you is based upon a strict reading of Article II, Section 8(h)(1), of the Florida Constitution and Plante v. Smathers. Article II, Section 8(h)(1), defines full and public disclosure, in part, as filing with the Secretary of State certain financial information. Since Plante v. Smathers also held that the Secretary of State must decline to accept a candidates' qualifying papers if the candidate fails to make full and public disclosure, and since full and public disclosure is defined, in part, as requiring filing with the Secretary of State, a copy of the full and public disclosure statement filed by candidates that qualify with you should be sent to the Secretary of State. Otherwise, those candidates could be disqualified.

In response to your second question, an incumbent who has filed full and public disclosure with the Secretary of State on or before July 1, should also file a copy of that disclosure statement if he or she seeks to qualify as a candidate after July 1. A new disclosure statement is not required because it would only show the same information stated in the previously filed disclosure statement, that is the net worth (assets, liabilities and income) of the candidate for the previous tax year. A copy of the disclosure statement should be filed with the qualifying papers for administrative convenience.

In response to your third question, candidates for elected constitutional office within your county are required to file both the statement of financial interests under Section 99.012(6), F.S., and the full and public disclosure statement under Article II, Section 8(a), of the Florida Constitution. This conclusion is based upon the plain language of Article II, Section 8(h), and the Florida Supreme Court decision Florida Commission on Ethics v. Plante, 369 So. 2d 332 (Fla. 1979).

Article II, Section 8(g), states: "This section shall not be construed to limit disclosures and prohibitions which may be established by law to preserve the public trust and avoid conflict between public duties and private interest." Article II, Section 8, was adopted by the voters of Florida in November of 1976, one year after Section 99.012(6), F.S., was enacted. In light of the clear language of Article II, Section 8(g), the statement of financial interest required by Section 99.012(6), F.S., is not limited by Article II, Section 8(a) and (h).