

DE 78-05 - January 23, 1978

**Testimonial Affair
s. 106.025, F.S.**

To: Mr. Thomas K. Peterson, Esq., Administrative Assistant, Office of the State Attorney, Metropolitan Justice Building, Miami, Florida 33125

Prepared by: Division of Elections

This is in response to your recent letter in which an opinion of this office was requested in answer to substantially the following question:

Does the law relating to testimonials for public officeholders apply to such an affair held after one leaves office, but the planning and fund raising of which precede the departure from office?

The factual background to your question as outlined in your letter is that a farewell testimonial dinner is being planned for Richard Gerstein to be held some time after January 20, 1978 when he leaves office as State Attorney for the Eleventh Judicial Circuit. He will at the time of this dinner be neither a public officer nor a candidate for public office. Though the dinner will be held after he leaves office, planning and ticket sales will be taking place prior thereto. A gift of the proceeds to Mr. Gerstein is contemplated.

Testimonial affairs in this state are now regulated by s. 106.025, F.S. (1977). It imposes certain stringent limitations and reporting requirements on testimonial affairs held for public officers and candidates for such offices. This law became effective January 1, 1978 and replaced the former testimonial statute, s. 99.193, F.S. (1975), which was repealed.

By your assertion that Mr. Gerstein is not a candidate for public office, the only possible application of the testimonial law would be those provisions regarding such affairs for any person holding public office, s. 106.025(2), F.S. (1977). The language of the statute indicates its application only to one "holding public office." No provision for the law to apply to persons who have left office has been included. This was also true of the former testimonial statute.

The date of the testimonial affair is the key to determining the law's application. The status of the honoree on the date the testimonial is held is determinative. If he or she is a candidate on that date, then s. 106.025(1), F.S. is applicable; if a public officer, subsection (2) is pertinent; and if not in office, no provision of the testimonial law affects the affair. Events subsequent to the event may evidence a status differing from that indicated.

In the case at hand, the honoree will no longer be a public officer on the date of the testimonial. Such being the case, the testimonial law does not apply even if planning for the event and the sale of tickets may occur prior to the honoree leaving office.

SUMMARY

A testimonial affair held for a person who has left public office is not subject to the regulation and disclosures required by s, 106.025, F.S., unless he/she is a candidate for public office.