

DE 78-08 - January 23,1978

**Time Of Appointment Of Campaign Treasurer, Designating Depository Accepting Contributions**

**s.106.021, F.S. (1977); s. 106.15(1), F.S. (1975)**

*To: Honorable E.D. "Bud" Dixon, Clerk of Courts, Imperial Polk County, P.O. Box 1899, Bartow, Florida 33830*

*Prepared by: Division of Elections*

This is in response to your letter of December 21,1977 in which you requested an opinion of this office in answer to the following question:

"What is the earliest date a candidate for election can appoint his campaign depository, campaign treasurer and begin accepting campaign contributions?"

Your question addresses an issue which has been recently considered by the courts. Namely, what limitations on political expression may be imposed on a candidate in a constitutionally permissible manner. It is without doubt that the legislature may regulate the election process to protect the integrity of the ballot and to insure free and fair elections. See Treiman v. Malmquist, 342 So.2d 972 (Fla. 1977), Danciu v. Glisson, 302 So.2d 131 (Fla. 1974), Bodner v. Gray, 120 So.2d 419 (Fla. 1961). However such restrictions must be reasonable and be directly related to the legislature's proper role in the regulation of elections. When the regulation goes beyond this invisible line of permissibility and intrudes upon constitutional safeguards the courts have struck down the statute.

The U.S. Supreme Court has found certain limitations on political contributions and expenditures to be violative of First Amendment constitutional rights. Ruling on portions of federal election campaign laws in the landmark Buckley case, the court said:

"Discussion of public issues and debate on the qualifications of candidates are integral to the operation of government established by our constitution. The First Amendment affords the broadest protection to such political expression in order 'to assure the unfettered interchange of ideas for the bringing about of political and social changes desired by the people.'" Roth v. United States, 354 U.S. 476, 484 (1957).

". . .in the free society ordained by our constitution it is not the government but the people — individually as citizens and candidates and collectively as associations and political committees — who must retain control over the quantity and range of debate on public issues in a political campaign." Buckley v. Valeo, 424 U.S. 1, 16 S.Ct. 612, 46 L.Ed.2d 659 (1976).

The Florida Supreme Court followed the same line of reasoning in determining that s. 106.15(1), F.S. (1975), was "a restraining of free speech and a restriction on the quantity of a candidate's

communication and diversity of political speech." Sadowski v. Shevin, 345 So.2d 530 (Fla. 1977). This statute prohibited the use of certain advertising media or the renting of halls to address the public in furtherance of any candidacy prior to that candidate's qualifying for office, s. 106.16(1), F.S. (1975).

The effect of the law was to limit political campaigning to the period between the qualifying time (in July for most offices) to the November general election. Nothing prohibited a candidate from announcing his/her candidacy and making other expenditures not prohibited by the statute.

However, the court found it to be a limitation on campaign spending which the Buckley decision had found invalid. The statute was held to be unconstitutional by being "violative of freedom of speech rights in that it is designed primarily to be a limitation on the quantity of political speech." Sadowski v. Shevin, *Supra*, at 334.

The removal of this statutory limitation by the court (the vestige of which was repealed by the 1977 legislature, s. 54, ch. 77-175, Laws of Florida, effective January 1, 1978) eliminated the only restriction on the length of a campaign. Any study of recent campaigns indicates, particularly in major races, that candidates are beginning earlier and earlier to organize, raise money, travel, and make appearances as a candidate. The announcement and the filing of candidate qualification papers have become mere formalities to be done during a long campaign.

The Sadowski decision invalidated one form of legislative limitation on the length of campaigns by effectively reducing advertising, the lifeblood of modern political campaigns, to a certain time period. The court reiterated the authority of the legislature to place reasonable restrictions on campaigns, but found the method utilized to be a limitation on the quantity of speech and thus impermissible. The legislature may still attempt to place some regulations on campaigns which pass constitutional muster. But with little guidance given by either the U.S. or Florida Supreme Court, the legislature has declined to do so. In the massive election law revision of 1977 the legislature merely repealed the offending statute and did not attempt any other form of regulation which might shorten the "political season".

Therefore, there is no time restriction on when any individual may begin to campaign, raise money, and make campaign expenditures. The only restriction is that prior to the receipt of contributions and expenditure of funds in the furtherance of his/her candidacy, a campaign treasurer must be appointed and the campaign depository designated, s. 106.021(1), F.S. (1977). The appointment and designation must be executed in writing and filed with the officer before whom the candidate will qualify. Id. At the time of filing the appointment and designation form (DS-DE 9) the candidate must identify the specific office he/she is seeking, s. 106.021(1)(a), F.S. (1977). This requires the specific seat, group, or district in the case of multiple races or vacancies for similar office. Unless otherwise stated, it can be assumed that the candidate is seeking election at the next general election when that office is on the ballot.

## **SUMMARY**

An individual may appoint his/her campaign treasurer, designate the depository, and begin accepting contributions and making expenditures at any time. The appointment designation form filed with the

qualifying officer must identify the specific office being sought. Unless otherwise stated, the candidacy shall be assumed to be for the next general election in which that office is on the ballot.