

DE 78-28 - July 25, 1978

**Candidate Withdrawal; Procedure; Receipt Of Contributions; Disposition Of Funds
ss. 99.061,100.111, 101.253, 106.011,106.141, F.S.**

To: Ross A. McVoy, Madigan, Parker, Gatlin, Swedmark & Skelding, P.O. Box 669, Tallahassee, Florida 32302

Prepared by: Division of Elections

On behalf of your client, Raleigh Greene, a previously announced candidate for governor, you have posed the following questions:

- "1. What is the procedure to withdraw as a candidate?
2. It is Mr. Greene's understanding that he may continue to accept funds for his campaign depository account and spend from that account for campaign purposes until (the) Division (of Elections) receives a letter from Mr. Greene or his authorized representative officially withdrawing from the campaign or he does not qualify as a candidate by noon July 25, 1978. Is this correct?"

The Florida Election Code (chapters 97-106, F.S.) does not establish a procedure whereby an individual may withdraw as a candidate prior to the filing of qualification papers. Should such a withdrawal occur subsequent to qualifying, but prior to the end of the qualification period, the filing fees are returned, s. 99.061(1), F.S. In the event of a withdrawal of a candidate causing a vacancy in nomination which leaves no candidate for that office of such party, the Governor is to call a special primary election, s. 100.111(3)(a), F.S.

None of the above statutes provide a procedure for withdrawal, but rather merely refer to what transpires following such withdrawal. Such a procedure is set out elsewhere. A candidate required to qualify with the Department of State, such as a candidate for governor, shall not have his/her name printed on the ballot if such candidate has notified the Department in writing, under oath, on or before the 39th day before the election, or his/her unwillingness to accept the nomination or election to the office "...for which he filed qualification papers." s. 101.253(2), F.S. The Department has discretionary authority to allow withdrawal by this procedure subsequent to the 39th day before an election. *Id.* Though not at issue here, an identical procedure is provided for those candidates qualifying with the county supervisors of elections, s. 101.253(1), F.S.

By its express language, this statute is applicable only to candidates who have filed qualification papers. In the absence of a withdrawal procedure for candidates prior to qualifying, the Division of Elections must look to procedures provided elsewhere for guidance. Some guidelines must be provided in that all candidates, regardless of whether it occurs prior or subsequent to qualifying, are subject to a surplus funds disposition process.

Within ninety (90) days of withdrawing as a candidate, all funds on deposit in the campaign account must be disposed in a certain prescribed method, s. 106.141(1), F.S. No contributions may be accepted for that candidate subsequent to withdrawal. Id. Thus, it is obvious that the actual time of withdrawal must be determined to be a certain date in order to invoke the ninety day period.

The public announcement of a candidate's withdrawal does not provide a truly useful withdrawal date. A person could renounce the withdrawal too easily and the announcement might never come to the attention of the appropriate elections official.

The better course seems to borrow from s. 101.253, and require notification in writing. Therefore, a candidate for office, the qualifying officer for which is the Secretary of State, shall notify the Division of Elections in writing of his/her withdrawal as a candidate for that office. Such writing shall be under oath and shall constitute an effective withdrawal upon receipt by the division. An acknowledgement shall be promptly returned reflecting the date of receipt from which the ninety day fund disposition procedure begins to run.

A candidate contemplating withdrawal, or who has publicly announced withdrawal, may receive campaign contributions until the written notification is received by the division. A treasurer's report shall be filed on the next due date pursuant to s. 106.07, F.S., following the filing of the withdrawal notice reflecting all contributions received and expenditures made prior to withdrawal. A final treasurer's report shall be filed no later than the final disposition date. s. 106.041(6), F.S.

Any contributions received after the candidate's notice of withdrawal has been received by the Division of Elections should be promptly returned to the contributor. Failure to do so constitutes a violation of the election law and is a misdemeanor of the first degree, s. 106.141(7), F.S.

In the event a candidate does not notify the division of his/her withdrawal prior to the close of qualifying and such person failed to file qualification papers, the division shall consider the candidate to have withdrawn as of the final day on which to qualify. The ninety day disposition period would begin to run on that day. In 1978, qualifying closes at noon, July 25th.

Expenditures may be made following notification of withdrawal, provided they are for expenses incurred in the course of the campaign. Likewise, expenditures incurred in the course of "winding up" the campaign are permissible. Any surplus funds remaining after all obligations of the campaign have been satisfied shall be disposed in accordance with s. 106.141(4), F.S. It should be kept in mind that, by definition, the election law requires all expenditures from a candidate's account to be campaign related, s. 106.011(4), F.S.

SUMMARY

Prior to having qualified, a candidate may withdraw by notifying the Division of Elections in writing under oath. (In the case of a candidate for an office for whom the Secretary of State is the filing officer). The ninety day fund disposition procedure begins upon receipt of this notice by the division.

Campaign contributions may be accepted until this receipt. Expenditures may be made for expenses incurred in regard to "winding up" the campaign.