

DE 78-47 - November 3, 1978

Expenditures; Disposition Of Funds
ss. 97.021,101.151, 106.011, 106.07, 106.141, F.S. (1977)

To: Honorable Mary E. Morgan, Supervisor of Elections, Pasco County Courthouse, Dade City, Florida 33525

Prepared by: Division of Elections

By your recent letter you requested a formal advisory opinion of the division with respect to the following question:

"May a candidate eliminated from an election by nomination, election, or defeat lawfully expend campaign funds for the purpose of purchasing time and space in a news medium for a thank you advertisement?"

Section 97.021(1), F.S. (1977) provides that the term Election means "any primary election, special primary election, special election, general election, or presidential preference primary election." Section 106.011(6), F.S. provides that "Election means any primary election, special primary election, general election, special election or municipal election held in this state for the purpose of nominating or electing candidates to public office. . ."

Therefore, in the context of your question a candidate may be "eliminated" at the first or second primary election or the general election due to failing to receive the necessary number or majority of the votes cast or may be elected by receiving the majority of the votes cast at the general election.

A candidate who is the nominee of a party and who has no opposition in the general election is not considered elected until the general election. See s. 101.151(6), F.S. (1977). That specific situation is detailed and its consequences expanded upon in DE 78-44, and it is suggested that that opinion be referenced concerning questions relating to expenditures of a candidate prior to the general election who has not general election opposition.

Any item which is paid out of a campaign account of a candidate is considered to be expenditure under the election law, and section 106.11, F.S. (1977) specifies how expenditures are to be handled. Section 106.011(4), F.S. (1977) provides that expenditure is:

". . . a purchase, payment, distribution, loan, advance, or gift of money or anything of value made for the purpose of influencing the results of an election."

Therefore, in order for an expenditure to be within the phrase "made for the purpose of influencing the results of an election," it must be authorized and incurred prior to or on the date of the concerned election. Any expenditure which is authorized or incurred after that date could not be construed to be

within the intent of the aforementioned phrase. Thus, no expense item, whether it be an advertisement in the mass medium expressing a thank you, or a post election party provided for supporters by the candidate using campaign funds, is permissible if incurred after the day of the concerned election.

However, expenses may be incurred prior to or on the election day for an item which is authorized by the treasurer, provided there are adequate funds on deposit in the primary depository account to pay the full amount of the incurred expense, s. 106.11(3), F.S. (1977). The results of this situation is that an expenditure, such as you describe or an analagous one, could be authorized and incurred, provided it is done prior to or on the date of the election and funds are available.

Any funds which remain in the campaign account following the day of the election may only be used in paying those expenditures authorized and incurred prior to the election and which come to the campaign following that day. Section 106.07(5), F.S. (1977) requires a final report to be filed 45 days after the last election in a given election period in which a candidate participates or 45 days after the election in which a candidate participates or 45 days after the election in which a candidate is eliminated from nomination to office. If that report shows an unexpended balance of contributions, a report is to be filed by the treasurer no later than ninety (90) days following the election indicating the disposition of all campaign funds, s. 106.141, F.S. (1977).

Section 106.141, F.S. (1977) requires candidates who are eliminated or elected to office to dispose of funds remaining in their campaign account according to the provisions in subsection (4) thereof. Candidates elected to office are entitled to retain certain specified sums in the campaign account, to be used for "legitimate expenses in connection with his office." s. 106.141(5), F.S. (1977). In instances where a retention of funds by an elected official occurs, a quarterly report is a continuing requirement until the funds are exhausted or disposed of according to s. 106.141(4), F.S. (1977).

Such retained funds could be utilized by a successful candidate for the purpose of thank you letters, victory parties, etc. While the Legislature did not define "legitimate expenses in connection with his office," it would appear to include those expenses resulting from, or by virtue of one's public office, for which public funds have not been provided by the state or other governmental unit.

A candidate may purchase a post election thank you advertisement in a news medium provided the expenditure is authorized and incurred prior to or on the date of the election. Funds remaining in the campaign treasury following the election day are to be used solely for payment for remaining financial obligations incurred prior to or on election day, which are presented for payment. Remaining funds are to be disposed of according to s. 106.141, F.S. (1977). Retained funds may be utilized for thank you notices, etc., by a successful candidate by being "legitimate expenses in connection with his office."