

DE 78-50 - December 8, 1978

**Disposition And Retention Of Campaign Funds
ss. 106.07, 106.011, 106.11, 106.141, F.S. (1977); Ch. 78-403, Laws Of Florida.**

To: Honorable James F. Eckhart, Representative, 115th District, 370 Minorca Avenue, Coral Gables, Florida 33734

Prepared by: Division of Elections

Pursuant to your letter you have requested a formal advisory opinion of the Division with respect to substantially the following question:

To what uses may funds which are held over from the general election be employed?

Upon completion of the general election candidates who participated in that election are restricted to making payments from funds remaining in their campaign account for those items which have been authorized and incurred prior to or on the day of the election. Opinion DE 78-47 addresses post election expenditures and should be consulted in that regard. Pursuant to s. 106.11(3), F.S. (1977), as amended by s. 2, Ch. 78-403, Laws of Florida items may be paid for upon final delivery of goods or services, however they must be incurred before or on the day of the election. Any obligations which existed on the day of the election are to be fulfilled with the funds in the account.

Section 106.07(5), F.S., requires a report within 45 days following the general election, and if there is an unexpended balance of contributions shown in the report section 106.141, F.S., will require that within 90 days of the general election the funds be disposed of in accordance with the provisions of s. 106.141(4) and (5), F.S. (1977).

Subsection 5 of s. 106.141 provides that successful candidates may retain funds up to the amount specified therein, with the amounts varying depending on the office held. In the event that funds are retained by the successful candidate, a statement is to be filed on the first Monday of each calendar quarter until the account shows no unexpended balance of contributions and has been closed, s. 106.07(5), F.S. (1977). If the funds remaining in the account after the satisfaction of the obligations of the campaign exceeds the amount which may be retained or if the person chooses not to retain, then these are required to be disposed of according to the stipulations contained in subsection (4) of s. 106.141, F. S. (1977).

Funds which are retained in the account may be used only for "legitimate expenses in connection with his public office." s. 106.141(5), F.S. (1977). No funds may be spent for those purposes prior to the filing of the disposition designation report required by s. 106.141(6), F.S. (1977). Chapter 106 does not contain a definition for the terms or phrase "legitimate expenses in connection with his public office." DE 78-47 stated that the intent of this statement "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."

By the time funds have been designated as retained and are available for use, the concerned person should have assumed his public office. Part III of Chapter 112 generally speaks to the actions of acting public officers. It is noted that there does not appear to be any portion of that chapter of the law which would deal with the use of these funds.

Chapter 11, F.S., as well as the Senate Administrative Policies and Procedures handbook, establishes those funds which are to be available for use by members of the Legislature. The Senate policy handbook provides amount limits and appropriate usage of the public funds which are provided to senators. It must be assumed that the retained funds could be utilized to supplement these activities and amounts. Provided the activity or responsibility is something which is generated due to and with regard to a person's public position, rather than something personal in nature, expenses associated with that activity or responsibility could be paid with these retained funds. The legitimacy of the expense is to be initially determined by the particular person. Expenses related to an upcoming future campaign of the public officer would not be so related as such would not be connected with the public office, but with the furtherance of one's candidacy. The expense must be necessitated by, and be used for, the present public office or position.

The person retaining funds is to file the previously mentioned quarterly report pursuant to the stipulations of s. 106.07(2) and (3), F.S., and it is noted that s. 106.07(3)(e) allows or provides for the reporting of "each ... rebate, refund or other receipt not otherwise listed" Therefore, it is possible that in the event that an expense with respect to public office is presented and the funds to pay for such have yet to arrive from the appropriate governmental entity, these retained funds could be utilized to pay for same with the following reimbursement being deposited in the retained funds public office account. Thus potential cash flow problems can be avoided.

SUMMARY

Following the payment of all expenses and obligations of the general election a candidate may retain funds up to the maximum amounts specified in s. 106.141(5), F.S., and any excess of these amounts are to be disposed of pursuant to s. 106.141(4), F.S. Retained funds are to be used for "legitimate expenses in connection with public office." Absent legislative clarification of this term an expense will be considered within that term if it is incurred with respect to an activity or responsibility which is generated due to and with regard to the person's public, rather than personal, position. The person retaining funds must file a quarterly report of the use of such funds.