

DE 82-25--November 1, 1982

To: Mr. James T. Russell, State Attorney, Sixth Judicial Circuit of Florida, County Courthouse, Clearwater, Florida 33516

Prepared by: Division of Elections

This is in response to your letter of September 29, 1982, wherein you ask whether or not the word "certify" as used in Section 106.07(6) means "to swear" and whether opinions of the Attorney General's office or the Division of Elections have addressed this point.

Section 106.07(6) states:

“(6) The candidate and his campaign treasurer, in the case of a candidate, or the political committee chairman and campaign treasurer of the committee, in the case of a political committee, shall certify as to the correctness of each report, and each person so certifying shall bear the responsibility for the accuracy and veracity of each report. Any campaign treasurer, candidate, or political committee chairman who willfully certifies the correctness of any report while knowing that such report is incorrect, false, or incomplete is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.” (emphasis added)

You have noted that this provision does not expressly require the forms be sworn or affirmed before a notary public; nonetheless, the Division of Elections forms DS-DE 9, 12, and 13 call for a sworn (or affirmed) acknowledgement of the correctness of the report(s). There are two reasons for notarization.

First, a plain and ordinary interpretation of the statute requires that campaign expenditure reports be acknowledged before a notary. The word "certify" means:

To attest especially authoritatively or formally; to present in formal communication especially under hand and seal as being true, meeting as standard or being as represented.

Webster's Third New International Dictionary, Unabridged (1966 Edition)

In short, to certify is to acknowledge some act or instrument by attestation or affirmation before an officer qualified to take acknowledgements. 1 Fla. Jur 2d, Acknowledgements, Oaths, Affirmations and Notaries, & 8. Notaries public are the largest group of officers designated by law to issue certificates of acknowledgement. Clearly, in regard to campaign finance reports, the plain and ordinary meaning of the phrase "...shall certify as to the correctness of each report..." is that a certificate of acknowledgement be exercised by a notary public.

Secondly, the forms DS-DE 9, 12 and 13 have been promulgated as rules under Florida Administrative Code Rule 1-3.30(3) and the requirement of a certificate of acknowledgement by a notary is, at this point, a valid exercise of administrative discretion within the statutory authority of Section 106.07(6), F.S. The rule has never challenged under Section 120.54, F.S. (1981).

While there are no court or Attorney General opinions which address this point, I feel strongly that the courts would uphold the notarial acknowledgement as a requirement which furthers the statutory objective of full accurate disclosure of campaign finance. This mode of acknowledgement assures four things, which are virtually important to accurate disclosure: (1) the act of acknowledgement is performed personally by the candidate, campaign treasurer, or the political committee chairman or treasurer not by some other individual or agent; (2) acknowledgement is taken before a qualified officer; (3) the acknowledgement is freely given by the person who is required to take acknowledgement; (4) the certificate of acknowledgement is evidence that can be substantiated in a court of law. 1 Fla. Jur 2d, Acknowledgement, Oaths, Affirmations and Notaries, & 21. Accordingly, this model of acknowledgment furthers the purpose of a complete and accurate disclosure of campaign finances.

Please note the forms do not require an oath only an affirmation, which is a solemn statement used as a substitute for a sworn statement under oath by a person whose conscience will not permit them to swear. Florida laws allow the substitution of an affirmation whenever an oath is required by law. Section 92.52, F.S. (1981).

For the foregoing reasons, I believe that the word “certify” in Section 106.07(6) means a certificate of acknowledgement before a notary and that Division of Election forms DS-DE 9, 12, and 13 are valid within the meaning of the statute.