

DE 82-26--November 10, 1982

To: Mr. Martin J. Hanna, Assistant City Attorney, City of Coral Gables, Professional Plaza Suite #206, 1801 University Drive, Coral Gables, Florida 33065

Prepared by: Division of Elections

This is in response to your request for an advisory opinion pursuant to s. 106.23(2), FS. (1981). Your request for an opinion can be restated as follows:

“If a city commissioner has submitted his resignation to be effected November 2, 1982, in order to run for a seat in the Florida State House of Representatives, is he permitted to sit on the city commission at a regularly scheduled meeting of November 2, 1982 at 7:30 p.m.?”

Members of the State of Florida Legislature shall take office upon election. Article III, Section 15, Constitution of the State of Florida (1968). A person is considered elected when the results of an election are officially known and certified. State ex rel. Attorney General v. Johnson, 35 Fla. 2, 15 So. 786 (1885). The polls are closed at 7:00 p.m. of the day of the election. Thereafter, the voting systems are sealed pursuant to Section 101.54, FS. (1981). At the close of the polls, or as soon thereafter as is practicable, the county canvassing board will publicly canvass and certify the vote given to each candidate as shown by the returns and absentee ballots then on file in the office of the Supervisor of Elections. Section 102.141, FS. (1981). Immediately after the certification of any election by the county canvassing board, the results shall be forwarded to the Department of State concerning the election of any federal or state officer, including legislative offices. No later than 5 p.m. of the seventh day following an election, the State Election Canvassing Commission shall certify the returns of the election and determine and declare who has been elected for each office. Section 102.111, FS. (1981), as amended by Chapter 82-143, Section 6, Laws of Florida. The Department of State will give a certificate of election to any person certified by the State Canvassing Commission. Section 102.121, FS. (1981). The certificate is prima facie evidence of the election of such person. Section 98.321, FS. (1981).

The time required by the county canvassing board to canvass and certify the election of a candidate will vary from county to county. In some counties, the function can be performed on the evening of the election; in other counties, canvass and certification may not occur until the next morning. In any event, canvass and certification by the county board is unlikely to be performed as of 7:30 p.m. of the election day; accordingly, a candidate for legislative office who has properly resigned a city council seat effective November 2, 1982 could attend a city council meeting on that date and act in the capacity of a city councilman with the assurance that he is not yet officially elected to legislative office.