

DE 83-11--May 24, 1983

**PRIVATE FINANCING OF A COUNTY
REFERENDUM ELECTION**

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Prepared by: Division of Elections

In complying with your request, this is a formal Elections Opinion pursuant to the authority of s. 106.23(2), F.S. on essentially the following question:

“Can a private person or corporation finance in whole or in part a county referendum election to establish tourist development tax?”

The Martin County Board of County Commissioners has apparently passed a resolution pursuant to s. 125.0104, F.S. seeking to levy a tourist development tax in the county. Before the tax can be imposed, it must be approved in a referendum election by the electors of the county pursuant to s. 125.0104(6), F.S., which states in pertinent part:

(6)(a) "No ordinance enacted by any county levying the tax authorized by this section shall take effect until the ordinance levying and imposing the tax has been approved in a referendum election by a majority of the electors voting in such election in the county or by a majority of the electors voting in the subcounty special tax district affected by the talk.

(6)(b) The governing board of the county levying the tax shall arrange to place a question on the ballot at the next regular or special election to be held within the county, substantially as follows:

_____FOR the Tourist Development Tax
_____AGAINST the Tourist Development TM

(6)(c) If a majority of the electors voting on the question approve the levy, the ordinance shall be deemed to be in effect.”

Chapter 125, F.S. does not indicate how a referendum election to approve the Tourist Development Tax will be conducted or financed. There are no Elections Opinions, Attorney General's Opinions or Florida Court decisions on this point.

As a general rule, the expenses of holding all elections for county and state offices are paid out of the treasury of the county (s. 100.011(3), F.S.) or, in some circumstances, by the state. (See, s. 100.101. F.S.)

Section 100.011(3), F.S. states:

"The expenses of holding all elections for county and state offices necessarily incurred shall be paid out of the treasury of the county or state as the case may be, in the same manner and by the same officers as in the general election."

There are several other references in the Election Code which indicate that the costs of conducting certain kinds of elections are borne by the county. Laws governing general elections are also applicable to bond referendum elections. Section 100.221, F.S. The costs of conducting a county bond referendum shall be borne by the county just as the expenses for a primary or general election are borne by the county. The Election Code also provides that the actual cost of conducting a freehold election or referendum shall be borne by the county, district or municipality requiring the election to be held. Section 100.241, F.S. On the other hand, I find no statutory authority in Florida to provide for any form of private financing of any public elections.

In some states, primary elections to select candidates of various political parties for public office are not considered to be public elections. Expenses incurred to conduct such elections are assessed against the political party (e.g. Texas). However, I find no authority of any kind to support private financing of the public elections in Florida. The Tourist Development Tax Referendum is not just a political party selection or a private election. It calls for the exercise of the public tax power which has impact on electors and residents of the county, not just a private constituency.

In Florida, public elections are not private affairs of political parties, political committees, or private interest groups but are established to elect candidates to public office, to approve or remit ballot issues or referenda and to fill vacancies in office. Reading the provisions of the Election Code which address the expenses of an election, in pari materia with Chapter 125, F.S. leads me to conclude that the Legislature of Florida does not intend for public elections to be directly financed in whole or in part by private sources.

Under a private financing scheme, election financiers could acquire unprecedented influence over elections which might undermine the process as a whole. The authority and independence of the supervisor of elections in the selection of inspectors, clerks and pollworkers, the designation of precincts, the manner of conducting registration and other areas of election management might become compromised. Financing of election is an improper encroachment into the statutory authority of the supervisor of elections and the local governing body. Public Elections are not a business or a commodity, but a public trust best secured to the elected officials who are accountable to the electors for their actions.

SUMMARY

It is axiomatic that all public elections in Florida shall be financed by public funds as provided by law. There is no authority or precedent in Florida to permit elections to be directly financed in whole or in part by private sources.

