

**DE 88-12 - April 6, 1988**

**Candidates**  
**Sections 106.011(6), (10) and 106.021(1)(A), F.S.**

*To: Honorable Kathy M. Alesafis, City Clerk and Collector, City of Tarpon Springs, Post Office Box 1575, Tarpon Springs, Florida 34286-1575*

*Prepared by: Division of Elections*

This is in reference to your request for an advisory opinion regarding municipal candidates.

You are the City Clerk and Collector for the City of Tarpon Springs and the Division of Elections has authority under Section 106.23(2), Florida Statutes, to issue an advisory opinion to you relating the Florida Election Code, Chapters 97-106, Florida Statutes.

You asked the following question:

Whether a Tarpon Springs city commission candidate who has filed a Form DS- DE 9, Appointment of Campaign Treasurer and Designation of Campaign Depository for Candidates, can actively campaign before qualifying for office?

The City of Tarpon Springs' Charter provides:

No person shall be a candidate for the office of mayor-commissioner or commissioner until such person has paid a qualification fee of \$25.00, has been requested to be a candidate for such office by at least 25 electors and has been a continuous resident of the city for at least one year prior to the final day for qualifying for such office.

The city ordinances also provide the procedure for qualifying for office which states that the qualifying period shall be not more than 60 days nor less than 40 days prior to the election and not later than 5:00 p.m. of said final day for filing petitions. The issue is, therefore, does Chapter 106, Florida Statutes, relating to campaign financing supersede the city charter and ordinances?

The 1977 Legislature adopted Chapter 77-175, Laws of Florida, which substantially revised the election laws of Florida. The primary application of the Election Code is to elections for county, state, and national offices; however, certain sections of the Election Code do apply to municipalities.

Sections 106.011(6) and (10), Florida Statutes, defines "election" and "public office" and both definitions state that these terms apply to municipal elections.

Section 106.021, Florida Statutes, provides that candidates for nomination or election to office may not accept any contributions or make any expenditures for public office unless that person has

appointed a campaign treasurer and designated a primary campaign depository. Once this form has been filed with the filing officer, the candidate may begin accepting contributions and making expenditures. It is our opinion, that it is clear from Chapter 106, Florida Statutes, that the Legislature intended that these provisions apply to candidates for all elections including primary elections, special primary elections, general elections, special elections or municipal elections and that Chapter 106, Florida Statutes, supersedes the City of Tarpon Springs' Charter and Ordinances. However, for those areas not addressed by Chapter 106, Florida Statutes, the city charter and ordinances will prevail.

Therefore, when a Tarpon Springs city commission candidate has filed a Form DS-DE 9, Appointment of Campaign Treasurer and Designation of Campaign Depository for Candidates, he may actively campaign for office as long as he follows the requirements of Chapter 106, Florida Statutes.

The qualifying fee and qualifying periods for municipalities have not been preempted by the Florida Election Code so that the city charter provisions and ordinances will govern.

### **SUMMARY**

Chapter 106, Florida Statutes, applies to candidates for all elections including primary elections, special primary elections, general elections, special elections, or municipal elections and Chapter 106, Florida Statutes, supersedes the City of Tarpon Springs' Charter and Ordinances.

When a Tarpon Springs city commission candidate has filed Form DS-DE 9, Appointment of Campaign Treasurer and Designation of Campaign Depository for Candidates, he may actively campaign for office so long as he follows the requirements of Chapter 106, Florida Statutes. Since Chapter 106, Florida Statutes, does not address the qualifying period for city commission candidates, the requirements of the city charter and ordinances will prevail.