

DE 90-05 - January 22, 1990

**Election Assessment
Section 99.093(1), F.S.**

To: Mr. Bill C. Kascavelis, Village Clerk, Village of Tequesta, Post Office Box 3273, Tequesta, Florida 33649

Prepared by: Division of Elections

This is in reference to your request for an advisory opinion regarding the one percent election assessment levied upon municipal candidates as provided in Section 99.093(1), Florida Statutes. As you are a municipal clerk, the Division of Elections has authority under Section 106.23(2), Florida Statutes, to issue an advisory opinion to you relating to the Florida Election Code, Chapters 97-106, Florida Statutes.

You asked the following question:

Whether a candidate for the office of council member for the Tequesta Village Council must pay the one percent election assessment required by Section 99.093(1), Florida Statutes, where council members, although they receive no salary, receive a monthly per diem of \$200?

Section 99.093(1), Florida Statutes, provides that all candidates for municipal office shall pay an election assessment at the time of qualifying equal to one percent of the salary of the office sought. Simply put, your question is whether the monthly per diem is considered to be a salary.

Black's Law Dictionary defines per diem as "an allowance or amount of so much per day...generally, as used in connection with compensation, wages or salary, means pay for a day's service." Black's Law Dictionary 1023 (5th ed. 1979). Salary is defined as "stated compensation paid periodically by the year, month or other fixed period." Black's Law Dictionary 1200 (5th ed. 1979). Additionally, the legal treatise Florida Jurisprudence, Second Series, notes that the outstanding feature of a salary is that it is fixed compensation over a period of time. See 9 Fla. Jur. 2d, Civil Servants S. 141.

Based upon the foregoing definitions, a monthly per diem of \$200 that is paid to council members, without the requirement that expenses be incurred in order to receive the per diem, is "fixed compensation over a period of time" that is equivalent to a salary. The courts have determined that the term "per diem" is synonymous with "salary" when it is in the context of compensation for services and not the repayment of money expended in the discharge of duties of the office. See Peay v. Nolan, 7 S.W. 2d 815 (Tenn. 1928).

Therefore, the annual per diem amount of \$2400 should be considered as a salary for the purpose of the election assessment. A candidate desiring to qualify for a village council race is to pay, in addition to the \$30 qualifying fee, the \$24 election assessment or pursuant to Section 99.093(2), Florida

Statutes, he may file a sworn oath stating that he is unable to pay the election assessment without imposing an undue burden on his personal resources or resources otherwise available to him.

SUMMARY

A candidate for the office of village council member, which office receives a monthly per diem, must either pay the election assessment or file a sworn oath stating that he is unable to pay the election assessment without it imposing an undue burden on his personal resources or resources otherwise available to him.