

**DE 92-03 - January 14, 1992**

**Transfer of Surplus Funds into Office Account  
Section 106.141(5)(b), F.S.**

*TO: Mr. Jerry Gardner, Executive Director, Office of the State Attorney, Seventh Judicial Circuit of Florida, 251 North Ridgewood Avenue, Daytona Beach, Florida 32114-7505*

*Prepared by: Division of Elections*

This is in response to your recent letter requesting clarification of Section 106.141(5)(b), Florida Statutes. You are the Executive Director for the Office of the State Attorney for the Seventh Judicial Circuit of Florida and you are requesting an advisory opinion, in behalf of the State Attorney, on the effect of certain provisions of the Florida Election Code upon a candidate who has been elected to the Office of State Attorney. Pursuant to Section 106.23(2), Florida Statutes, the Division of Elections has authority to issue an advisory opinion to you relating to the Florida Election Code, Chapters 97-106, Florida Statutes.

You ask:

- (1) Does Section 106.141(5)(b), Florida Statutes, apply to a candidate who has been elected to the Office of State Attorney?
- (2) Would the expenses described in the second paragraph of Section 106.141(5), Florida Statutes, include the purchase of special award plaques to be given citizens for their cooperation with law enforcement officials and for purchase of food for a banquet for juvenile alternatives sentencing program volunteers from the circuit?
- (3) Whether the expenses described in the second paragraph of Section 106.141(5), Florida Statutes, would include office equipment to be used by the Office of the State Attorney?

The answers to your questions are, respectively:

- (1) Yes. Section 106.141(5)(b), Florida Statutes, applies to a candidate who has been elected to the Office of the State Attorney.
- (2) Yes. The office expenses provided in Section 106.141(5), Florida Statutes, would include special award plaques to be given to citizens for cooperation with law enforcement officials and for a banquet for juvenile alternatives sentencing program volunteers, provided such expenses are necessitated by and used for the Office of the State Attorney.
- (3) Yes. The office expenses provided in Section 106.141(5), Florida Statutes, include the purchase of office equipment, provided such equipment is purchased for and used by the State

## Attorney's Office.

Section 106.141(5)(b), Florida Statutes, provides that any candidate elected to a multicounty office may transfer from his campaign account to an office account any amount of the funds on deposit in such campaign account up to \$5,000.

The State Attorney for the Seventh Judicial Circuit is an elected official. Moreover, the Office of the State Attorney for the Seventh Judicial Circuit of Florida is a multicounty office, since it includes the counties of Volusia, Flagler, Putnam, and St. Johns. Section 106.141(5)(b), Florida Statutes, is, therefore, applicable to a candidate who has been elected to the Office of State Attorney for the Seventh Judicial Circuit.

As to your second and third questions, Section 106.141(5), Florida Statutes, provides that any funds transferred by an elected candidate into an office account shall be used only for legitimate expenses in connection with his public office. Thus, based on this statutory provision, an elected candidate may use the surplus campaign funds he transfers into an office account only for "legitimate expenses in connection with his public office." Id.

Chapter 106, Florida Statutes, does not define what expenses are included in "legitimate expenses in connection with his public office." However, the division opined in DE 78-50 that the legitimate expenses of one's public office included any expense that was necessitated by and used for the elected person's present public office or position, and that the legitimacy of such expense must be initially determined by the elected candidate. It is the responsibility of the elected candidate to determine whether an expense to be paid out of these surplus funds is an expense incurred as a result of and due to that person's public office or position as opposed to an expense that is personal in nature. As stated in DE 88-43, what is a legitimate expense for one public office may not be a legitimate expense for another office. Therefore, an elected candidate might wish to contact the department responsible for auditing his office for more specific information as to what would or would not constitute a legitimate office expense.

Accordingly, the division is of the opinion that an elected state attorney may use the surplus campaign funds he transfers into his office account for purchasing award plaques, paying banquet costs, and purchasing office equipment, provided such expenses are necessitated by and used for his present public office.

## SUMMARY

The Office of State Attorney for the Seventh Judicial Circuit of Florida, which includes Volusia, Flagler, Putnam, and St. Johns counties, is included in the definition of a multicounty office as that term is used in Section 106.141(5)(b), Florida Statutes. Funds transferred from a campaign account into an office account pursuant to the provisions of Section 106.141(5), Florida Statutes, may be spent to purchase special award plaques, pay banquet costs, and purchase office equipment, provided such expenses are necessitated by and used for the State Attorney's Office.