

DE 93-02 - March 5, 1993

**Removal of A Candidate's Name From the Ballot
§§ 97.041, 99.021(1), 106.18, 106.19, F.S., and Art. IV, § 4, Fla. Const.**

*TO: The Honorable David Leahy, Supervisor of Elections, Metropolitan Dade County, Suite 1910,
111 North West First Street, Miami, Florida 33128-1962*

Prepared by: Division of Elections

This is in response to your request for an advisory opinion regarding when a candidate's name is omitted from the ballot. The Division of Elections has authority under Section 106.23(2), Florida Statutes, to issue advisory opinions relating to the Florida Election Code (the Code), Chapters 97-106, Florida Statutes, to several categories of persons, including a supervisor of elections.

You ask:

Whether the provisions of Section 106.18(1), Florida Statutes, mean that once convicted of violating the provisions of Section 106.19, Florida Statutes, a candidate cannot run for public office again in this state, or do these provisions only apply to the election in which the candidate is presently participating?

For reasons which follow, we construe these provisions to apply only to the election in which the candidate is presently participating.

Section 106.19, Florida Statutes, provides certain misdemeanor and civil penalties for persons who knowingly and willfully engage in the conduct proscribed therein. In addition, Section 106.18(1), Florida Statutes, provides that "the name of a candidate shall not be printed on the ballot for an election if the candidate is convicted of violating Section 106.19."

As a general matter, it should be noted that current law clearly prevents anyone convicted of a felony from holding public office. See, Art. VI, § 4, Fla. Const.; §§ 97.041 and 99.021(1), Fla. Stat. However, Section 106.19, Florida Statutes, deals with misdemeanors and civil penalties, and there is no blanket constitutional or statutory bar prohibiting anyone convicted of a misdemeanor from holding public office.

In researching the history to Section 106.18(1), Florida Statutes, we note the statute formerly provided that the name of a candidate "shall not be printed on the ballot . . . if the candidate . . . has been convicted of violating s. 106.19. . . ." (Emphasis added.) Ch. 77- 175, § 57, Laws of Fla. However, Section 106.18(1), Florida Statutes, has been amended to substitute the word "is" for "has been." Thus, the Legislature substituted the third person singular present tense of the verb "to be," i.e., is, for the past participle of this same verb, i.e., been. See, The American Heritage College Dictionary, Second College Edition, 1985.

When the Legislature amends a statute it is presumed to have a different meaning or, at least, the Legislature intended to clarify doubt or misapprehension about the law. Capella v. City of Gainesville, 377 So. 2d 658 (Fla. 1979); State ex rel. Szabo Food Services, Inc., of North Carolina v. Dickinson, 286 So. 2d 529 (Fla. 1973). Thus, it would appear that the Legislature did not intend to include past offenses; rather, it was concerned about a candidate's conduct during a present election.

Moreover, Section 106.19, Florida Statutes, is in large part a criminal statute and must, in the presence of any ambiguity, be strictly construed in favor of any person against whom it is applied. Ferguson v. State, 377 So. 2d 709 (Fla. 1979).

Therefore, it is the opinion of the Division that the conviction provision of Section 106.18(1), Florida Statutes, refers to a conviction during the present election in which the candidate is participating and not to any conviction which occurred during prior elections. As a result, such candidate is not forever barred from appearing on future election ballots.

SUMMARY

Section 106.18(1), Florida Statutes, requires that a candidate's name shall be removed from the ballot if the candidate is convicted of violating Section 106.19, Florida Statutes. The conviction provision of Section 106.18(1), Florida Statutes, refers to a conviction during the present election in which the candidate is participating and not to any conviction which occurred during prior elections.