

DE 93-07 - September 16, 1993

**Use of Campaign Funds When Changing Designation of Office
Sections 106.011(3)(a), 106.021(1)(a), and 106.08(1)(a) & (c), F.S.**

TO: The Honorable David C. Leahy, Supervisor of Elections, Metro-Dade County, Post Office Box 012241, Miami, Florida 33101-2241

Prepared by: Division of Elections

This is in response to your request for an advisory opinion regarding the use and disposition of campaign contributions when a candidate changes the designation of the office for which he is seeking election. 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 supervisors of elections.

Essentially, you ask the following:

When changing the designation of the office for which he is a candidate, pursuant to the provisions of Section 106.021(1)(a), Florida Statutes, may a candidate accept contributions from contributors to the candidate's original campaign and, if so, are there any limitations on such contributions?

Both questions are answered in the affirmative.

Section 106.021(1)(a), Florida Statutes, allows a candidate to change the designation of the office for which he is a candidate. However, prior to doing so, he must notify his contributors of his intent to redesignate the office for which he is a candidate and offer to make a pro-rata return of their contributions. No such return need be made unless a contributor notifies the candidate in writing, within 30 days of the offer, that he wants his contribution returned. Any contributions not requested to be returned may be used by the candidate as a contribution to his candidacy for the newly designated office.

A contribution to a candidate is anything of value given to influence the results of an election and there is a contribution limit of \$500 per candidate for each election. Sections 106.011(3)(a) and 106.08(1)(a), Fla. Stat. For purposes of the contribution limits, the first primary, second primary and general election are considered separate elections as long as the candidate is not an unopposed candidate. Section 106.08(1)(c), Fla. Stat. Thus, when changing office designation under the provisions of Section 106.021(1)(a), Florida Statutes, any contributions received for one office may or may not be considered contributions for the newly designated office, depending upon whether the contributor requests a pro-rated refund or allows the candidate to use the contribution to his candidacy for the newly designated office.

If a contributor requests and receives a pro-rated refund of the contributions he made to the candidate's original designated office, the contributor may contribute the maximum legal amount, i.e., \$500, to the candidate's campaign for the newly designated office.

However, where, as demonstrated below, the contributor waives his right to a pro-rated refund of the contributions made to the candidate's original designated office, the amount the contributor may contribute to the candidate's second campaign depends upon the amount of the pro-rated refund. Consider the following:

Number of Contributors	Amount	Total	Amount Returned at 1:2 to Each Contributor	Times Number of Contributors
10	\$500 ea	\$ 5,000	\$250 ea	\$2,500
5	250 ea	1,250	125 ea	625
<u>75</u>	50 ea	<u>3,750</u>	25 ea	<u>1,875</u>
90		\$10,000		\$5,000 Total
		<u>-5,000</u> (Less Expenditures)		Amount to be Returned
		Total Amount \$5,000 to be Returned		

As shown above, the first step is for the candidate to determine the ratio of dollars spent to dollars raised in order to establish a basis for the proration. Here, that ratio is \$5,000:\$10,000, or 1:2. Thus, each contributor is entitled to have returned to him a pro-rated refund of one-half of what he contributed to the candidate's original campaign.

However, each of the contributors in this example has waived his right to a refund and has allowed the candidate to use such refund as a contribution to his candidacy for the newly designated office. As a result, each of the contributors who were entitled to receive a pro-rated refund of \$250 but who, instead, allowed the candidate to use the refund as a contribution to his candidacy for the newly designated office is now free to contribute an additional \$250 to the candidate's newly designated campaign. Likewise, each of the five contributors who allowed the candidate to use the \$125 contribution to his candidacy for the newly designated office may now give contributions of up to \$375 for the first primary election. Also, each of the contributors who allowed the candidate to use the \$25 contribution to his candidacy for the newly designated office may now give up to \$475 in contributions to the candidate for the first primary election.

SUMMARY

The Florida Election Code specifically authorizes a candidate to change the designation of the office for which he is a candidate. However, prior to such redesignation, a candidate must give written notice to his contributors that he intends to redesignate the office for which he is a candidate and offer to refund, on a pro-rated basis, any contributions received. After receiving the candidate's redesignation notice, a contributor may request in writing a pro-rated refund or contribute the pro-rated refund to the

candidate's campaign for his newly designated office. If the contributor chooses to receive a pro-rated refund of his contributions, the contributor is then free to contribute the maximum legal amount to the candidate's campaign for the newly designated office, i.e., \$500. However, if the contributor chooses to allow the candidate to use the contribution to his candidacy for the newly designated office, the contributor is limited to contributing a total of \$500.