

DE 93-09 - November 1, 1993

**Return of Contributions; Waiver of Notice  
Section 106.021(1)(a), F.S.**

*TO: Mr. Richard R. Michelson, Attorney at Law, Michelson & Zippin, P.A., 7101 West McNab Road, Suite 200, Tamarac, Florida 33321*

*Prepared by: Division of Elections*

This is in response to your request for an advisory opinion regarding the notice provisions of Section 106.021(1)(a), Florida Statutes. You are the attorney for the City of Lauderhill and request this opinion on behalf of the city. The city, through its city clerk, performs election-related duties such as qualifying candidates for municipal office. Therefore, pursuant to Section 106.23(2), Florida Statutes, the division has the authority to render this opinion to you.

According to your letter and subsequent telephone conversation with this office, you ask whether the 15-day notice provision related to changing office designation may be waived in writing by a contributor and whether the contributor may waive his right to a refund of his contribution. For reasons which follow, the answer to the first part of your question is no and the answer to the second part is yes.

Section 106.021(1)(a), Florida Statutes provides, in pertinent part,

[I]f a candidate changes the designated office for which he is a candidate, he must notify all contributors in writing of his intent to seek a different office and offer to return pro rata ... those contributions given in support of the original office sought .... If, within 30 days after being notified ... the contributor notifies the candidate in writing that he wishes his contributions to be returned, the candidate shall return the contribution .... Any contributions not requested to be returned within the 30-day period may be used by the candidate for the newly designated office.

As can be seen, the above-quoted notice must be coupled with an offer to return contributions. The notice and offer must be given within 15 days after filing the change of designation. The contributor, in turn, has 30 days after the notice and offer to request a refund from the candidate. Any contributions not requested to be returned within this 30-day period may be used by the candidate for the newly designated office. Thus, Section 106.021(1)(a), Florida Statutes, places a statutory duty on a candidate to notify contributors of a change of office designation and creates a statutory right to a refund in favor of a contributor once notice is received and an offer is made.

It is well-settled in Florida that a person may waive any rights to which he is entitled whether conferred by the constitution, statute, or contract. Boardman v. Esteva, 323 So. 2d 259 (Fla. 1976); McDonald v. Miller, 90 So. 2d 124 (Fla. 1956); Gilman v. Butzloff, 22 So. 2d 263 (Fla. 1945); Bellaire v. Brown, 168 So. 625 (Fla. 1936). Federal authorities are in accord. Florida House of

Representatives v. U.S. Department of Commerce, 961 F.2d 941 (11th Cir. May 27, 1992), cert. dismissed, 113 S. Ct. 446 (1992). The doctrine of waiver encompasses not only intentional relinquishment of rights but also conduct which warrants an inference of the relinquishment of such rights. Miami Dolphins, Ltd. v. Genden and Bach, P.A., 545 So. 2d 294 (Fla. 3d DCA 1989). See also Kilpatrick v. McLouth, 392 So. 2d 985, (Fla. 5th DCA 1981) (statutory right of alimony or modification of final judgment of divorce may be waived in writing). However, there can be no waiver unless the party against whom the waiver is invoked was in possession of all material facts. Wilds v. Permenter, 228 So. 2d 408 (Fla. 4th DCA 1969).

Therefore, the 15-day notice with respect to a change of office designation is a statutory duty imposed on a candidate and is not waivable by a contributor. However, the right to a refund within 30 days of the notice is personal to the contributor and, like other statutory rights, may be knowingly waived by the contributor once all material facts are known to the contributor.

### **SUMMARY**

The right to a refund as provided in Section 106.021(1)(a), Florida Statutes, may be knowingly waived by a contributor once all material facts are known to the contributor. However, a candidate has a statutory duty to notify contributors when changing the designation of the office for which he is a candidate and such duty may not be waived by a contributor.