

DE 94-21 - November 3, 1994

**Office Account for Dade County State Attorney
Section 106.141(5), F.S.**

*TO: Mr. Donald K. Nelson, Executive Director, State Attorney's Office, Eleventh Judicial Circuit,
1350 Northwest 12 Avenue, Miami, Florida 33136-2111*

Prepared by: Division of Elections

This is in response to your request for an advisory opinion regarding office accounts established with leftover campaign funds. You are the Executive Director for the office of Katherine Fernandez Rundle, State Attorney, Eleventh Judicial Circuit. Therefore, pursuant to Section 106.23(2), Florida Statutes, the Division has authority to issue an opinion to you related to Chapters 97-106, Florida Statutes.

You acknowledge the fact that the Eleventh Circuit is comprised only of Dade County and ask whether Ms. Rundle may establish an office account of \$5,000 with leftover campaign funds. For the reasons which follow, the answer to this question is no.

Section 106.141, Florida Statutes, provides the manner in which leftover campaign funds may be disposed and provides that a portion of such funds may be used to create an office account for legitimate expenses in connection with the former candidate's newly acquired public office. § 106.141 (5), Fla. Stat.

In subsection (5) of Section 106.141, Florida Statutes, the specific amounts for various offices have been expressly established by the legislature as follows:

- (a) \$10,000, for a candidate for statewide office. The Governor and Lieutenant Governor shall be considered separate candidates for the purpose of this section.
- (b) \$5,000, for a candidate for multicounty office.
- (c) \$2,500 multiplied by the number of years in the term of office for which elected, for a candidate for legislative office.
- (d) \$1,000 multiplied by the number of years in the term of office for which elected, for a candidate for a county office or for a candidate in any election conducted on less than a countywide basis.
- (e) \$6,000, for a candidate for retention as a justice of the Supreme Court.
- (f) \$3,000, for a candidate for retention as a judge of a district court of appeal.

(g) \$1,500, for a candidate for county court judge or circuit judge.

It is readily apparent that only candidates for multicounty office may establish a \$5,000 office account. The State Attorney's office for the Eleventh Circuit is not a multicounty office. Rather, it is an office for which the candidate runs on a county basis only.

Therefore, unless otherwise provided by the legislature, we are of the opinion that you are a county office for purposes of Section 106.141(5), Florida Statutes. The legislature has not seen the need to provide an exception to Section 106.141(5)(d), Florida Statutes, for the Eleventh Circuit, even though it is the largest circuit in the state. As courts are quick to remind us, it is not a proper function of the executive branch of government to legislate; that function is reserved exclusively to the legislative branch of government. See, Heredia v. Allstate Insurance Co., 358 So. 2d 1353 (Fla. 1978); Thayer v. State, 355 So. 2d 815 (Fla. 1976).

Consequently, the amount of leftover campaign funds that may be used for an office account for the State Attorney for the Eleventh Judicial Circuit is limited to \$1,000 times the number of years in the term of office.

SUMMARY

The amount of leftover campaign funds that may be used for an office account for the State Attorney for the Eleventh Judicial Circuit is limited to \$1,000 times the number of years in the term of the office.