

RESCINDED

DE 97-03 - June 13, 1997

Deadline for Accepting Campaign Contributions Section 106.08(3), F. S.

TO: Mr. Edward H. Beazley, Jr., City Attorney, City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach, Florida 32168

Prepared by: Division of Elections

This is in response to your request for an advisory opinion from the Division of Elections regarding the "cut off" date for accepting a campaign contribution. You are the City Attorney for the City of New Smyrna Beach, Florida, and pursuant to section 106.23(2), Florida Statutes, the Division has authority to render this opinion to you.

Essentially, you ask for clarification on how to compute (or count) the days prior to the election day for the purpose of determining the deadline beyond which no campaign contributions may be accepted for a particular election. It is, therefore, necessary to quote the relevant portion of the statute in question.

Section 106.08(3), Florida Statutes, provides in pertinent part:

Any campaign contribution received by a candidate with opposition in an election... on the day of that election or less than 5 days prior to the day of that election shall be returned... to the person ... contributing it... .

It is axiomatic that statutes are to be interpreted according to the plain and ordinary meaning of the words used therein. State v. Stewart, 374 So.2d 1381, 1383 (Fla. 1979). And, when a statute is unambiguous one need only give effect to the plain meaning of its terms. State v. Egan, 287 So.2d 1, 4 (Fla. 1973).

Applying the foregoing rules of law and incorporating the example set forth in your letter, if the day of the election is Tuesday, the 5 days prior to this day are the prior Monday, the prior Sunday, the prior Saturday, the prior Friday, and the prior Thursday. Therefore, any contribution received after midnight of the day prior to the fifth day (midnight Wednesday) is a contribution received less than 5 full days preceding the election on Tuesday.

Finally, although you did not raise this issue in your request for an opinion, a common question which is usually asked in conjunction with the one posed by you is whether the foregoing "cut off" date applies if the candidate has no opposition on the ballot for the election in question. The answer to this question is no. The deadline only applies to candidates with opposition in *that* election. Thus, if a candidate is unopposed in a primary election, but has opposition in the general election, any contribution received within 5 days of the primary election would not have to be returned and could be

used by the candidate.

SUMMARY

If a candidate is opposed on the ballot in an election, the last date he or she may accept a campaign contribution is midnight on the day before the beginning of the fifth day prior to an election. If the election is on a Tuesday, which is generally the case, this date is midnight the immediately preceding Wednesday.