

DE 98-03 - March 10, 1998

Municipal and Special Elections

§§ 97.021(21), 100.3605, 106.07(1)(a), (8)(b), 106.011(6),(10), F.S., Ops. Div. Elect. 77-37, 88-12

TO: The Honorable David C. Leahy, Supervisor of Elections, Metropolitan Dade County, 111 Northwest 1st Street, Miami, Florida 33128-1962

Prepared by: Division of Elections

This is in response to your request for an advisory opinion regarding municipal and special elections. The Division is authorized to provide advisory opinions pursuant to section 106.23(2), Florida Statutes, when requested by a local officer having election-related duties.

You ask whether the penalty provisions of section 106.07(8)(b), Florida Statutes, apply to:

1. Municipal and county nonpartisan primary and general elections?
2. Special primary elections?
3. Special general elections that are not held on the first Tuesday after the first Monday in November in even-numbered years?

Although the Florida Election Code, particularly chapter 106, Florida Statutes, applies to municipalities, *Op. Div. Elect. 77-37 (December 20, 1977)*, and see, section 100.3605, Florida Statutes, provisions such as those found in section 106.07(8)(b), Florida Statutes, appear to have been drafted without considering municipal or county nonpartisan elections. This results in some ambiguity and necessitates further interpretation to resolve doubts as to the meaning of the law.

In case of doubt, one must look to the language of the law, the policy behind the law, and the purposes sought to be accomplished. *Lanier v. Bronson*, 215 So.2d 776, 778 (Fla. 4th DCA 1968), *City of Jacksonville v. Taxi, Inc.*, 247 So.2d 467, 468. Here, the purpose of the law is full disclosure of campaign contributions and expenditures and timely filing of campaign treasurer's reports. Moreover, this law, as is true with any law, cannot be construed to lead to an absurd or unreasonable conclusion. *State v. Rabun*, 233 So.2d 171, 172 (Fla. 3d DCA 1970).

With the foregoing in mind, section 97.021(21), Florida Statutes, defines a primary election as an election for the purpose of selecting party nominees on the general election ballot.

Section 106.07(1)(a), Florida Statutes, provides that candidates must file reports by certain designated due dates, providing that:

- (a) Except as provided in paragraph (b), following the last day of qualifying for office, the

reports shall be filed on the 32nd, 18th, and 4th days immediately preceding the first primary and on the 18th and 4th days immediately preceding the second primary and general election, for a candidate who is opposed in seeking nomination or election to any office, for a political committee, or for a committee of continuous existence.

(Emphasis supplied.)

Section 106.07(8)(b), Florida Statutes, reads, in part:

The fine shall be \$50 per day for the first 3 days late and, thereafter, \$500 per day for each late day, not to exceed 25 percent of the total receipts or expenditures, whichever is greater, for the period covered by the late report. However, for the reports immediately preceding each primary and general election, the fine shall be \$500 per day for each late day, not to exceed 25 percent of the total receipts or expenditures, whichever is greater, for the period covered by the late report. . .

(Emphasis supplied.)

The term "election," as defined in section 106.011(6), Florida Statutes, expressly includes municipal elections. Section 106.011(6), Florida Statutes, reads:

"Election" means any primary election, special primary election, general election, special election, or municipal election held in this state for the purpose of nominating or electing candidates to public office, . . .

(Emphasis supplied.); *See also*, §106.011(10), Fla. Stat., which defines "public office" to include a municipal office; *And see, Op. Div. Elect. 88-12 (April 6, 1988)* ("Chapter 106 applies to municipal elections and prevails over any conflicting charter provisions").

The foregoing statutory provisions are problematic because municipalities do not hold primary elections. Municipalities typically elect local officers in odd-numbered years (usually February and March) through "general" elections containing all of the qualified candidates. The candidate receiving the majority of votes cast in the general election is deemed elected. If no candidate receives a majority of votes, the two candidates receiving the highest number of votes proceed to a run-off election.

As a result, the only reports capable of being filed under the provisions of section 106.07(1)(a), Florida Statutes, are the reports due on the 18th and 4th days preceding the general election. If a run-off election is held, it is often conducted less than 18 days after the general election, in which case it is only possible to file a report on the 4th day preceding the run-off election (which is a Friday). On the other hand, if there are 18 or more days between each election, it would be possible to file both reports.

Therefore, candidates for municipal elections fall within the reporting and fine provisions of section 106.07, Florida Statutes, in so far as it is possible for such reports to be filed on the dates in question. As a result, the automatic fine provisions apply to all of the municipal elections identified in your

letter, provided that it is legally possible to file the reports on the designated due dates. To conclude otherwise would defeat the object and purpose sought to be accomplished by the law which is full disclosure and timely filing of campaign treasurer's reports. *Lanier, supra*.

In addition to municipal elections, counties and the state may conduct special primary and general elections for the purpose of filling vacancies in office or for the purpose of voting on ballot measures. The automatic fine provisions of section 106.07(8)(b), Florida Statutes, for the same reasons, would apply to these elections as well. Like municipal elections, however, there may not be adequate time between such elections for the filing of multiple reports because of the scheduling of the elections. If such is the case, persons can only file those reports that are legally capable of being filed.

SUMMARY

Because municipalities may conduct a general and, if necessary, a run-off election within a two week period, it is not always possible to file a report on the 18th day preceding the run-off election. However, for the normal election cycle, municipal candidates will file a report on the 18th and 4th days preceding the general election. If a run-off election is necessary, a report will be due on the 18th and 4th day preceding that election, provided, it is legally possible to file both. The fine provisions discussed herein also apply to special primary and general elections not held during the normal election cycle. Like municipal elections, all required reports that are capable of being filed, must be filed in accordance with section 106.07(1)(a), Florida Statutes.