

# Rescinded see DE 03-05

DE 98-16 - November 16, 1998

## Testimonials

§§99.193 (1972), 103.121(1), 111.012(1), 111.012(2), 112.312(12)(b)

*TO: The Honorable Tom Slade, Chairman, Republican Party of Florida, 719 North Calhoun Street, Tallahassee, Florida 32302*

*Prepared by: Division of Elections*

This is in response to your request for an advisory opinion regarding political party expenses and activities. You are Chairman of the Republican Party of Florida (the "Party"). Therefore, pursuant to section 106.23(2), Florida Statutes, the Division of Elections has authority to render this opinion to you.

Florida citizens elected a new Governor, the nominee of the Party, on November 3, 1998. You ask:

1. May the Party pay for inauguration events for the Governor-elect?
2. May one or more employees of the Party devote all of their work time to providing services for the transition of the Governor-elect while continuing to be paid by the Party?
3. May the Party pay or reimburse travel and other expenses of individuals, not employed by the Party, who provide services for the transition of the Governor-elect?
4. May the Party allow those who provide services for the transition of the Governor-elect to use office equipment, supplies, and services of the Party?

For the following reasons, we answer all of your questions in the affirmative. As a general rule, when funds are raised to honor an elected public officer, Florida law requires that such moneys are to be accounted for and disposed of in a certain manner. §111.012, *Fla. Stat.* Any breakfast, lunch, dinner, rally, party, reception, or **other affair held to honor...any elected public officer** is referred to as a testimonial. §111.012(1), *Fla. Stat.* (emphasis added). Elected public officer, in turn, is defined as "... any individual holding an elective state, ... office."

Technically speaking, one does not "hold" an elected or appointed public office until the term fixed by law begins. 9 *Fla. Jur. 2nd, Civil Servants*, §59. Thus, any affair held prior to January 5, 1998 does not qualify as a testimonial under the provisions of this section.

At one time, the provisions of section 111.012, Florida Statutes, resided within the Florida Election Code, chapter 97-106, Florida Statutes. See § 99.193, *Fla. Stat.* ( 1972 ). However, in 1980 section 111.012, Florida Statutes, was created as a stand alone provision of Florida law. See, *Ch. 81-304, §34, at 1455, Laws of Fla.* In 1972, Florida's Attorney General interpreted the testimonial provisions and

noted that:

The election process does not end on election day, nor does the legitimate interest in contributions cease when a particular candidate is elected.

*Op. Atty Gen. Fla. 72-58 (1972).*

The Attorney General then went on to hold that the testimonial provisions of section 99.193, Florida Statutes (1972), applied to dinners on behalf of persons elected to the United States Congress. Likewise, it is the opinion of the Division of Elections that the Governor's inaugural ball would qualify as a testimonial affair as defined under the substantially similar provisions of section 111.012, Florida Statutes.

Notwithstanding the forgoing, we do not believe that an affair held prior to the beginning of an officer's term, whether it be a party, reception or dinner, is strictly a testimonial. Thus reporting such affairs under the provisions of section 111.012, Florida Statutes, would be discretionary on the part of the nominee.

Prior to holding a testimonial, a notice of intent to hold the affair must be filed with the Division of Elections and no money may be received or spent until this notice has been filed. In addition, a depository must be designated and a treasurer appointed. §111.012(2)(a), *Fla. Stat.* The notice must contain the date and place the testimonial is to be held, the name and address of the persons in charge, the name and address of the officer in whose honor or on whose behalf the testimonial is to be held, the purpose for which the testimonial is to be held, and the purpose for which the funds raised are to be used. §111.012(2)(b), *Fla. Stat.*

The treasurer is responsible for receiving and spending all money donated for the testimonial and is responsible for keeping detailed accounts of how the money is spent. §111.012(2)(c), *Fla. Stat.* No money may be received or spent, unless it is done through the treasurer. *Id.*

At the conclusion of the testimonial, all remaining funds after deducting expenses must be disposed of by donating such funds to a charity, which must be identified in the notice, returned pro rata to each ticket purchaser or donor, or given to the State for deposit to the general revenue fund. §111.012(2)(d), *Fla. Stat.* Within 90 days of the conclusion of the testimonial, a report must be filed reflecting the disposition of these funds. *Id.* The report must include the full name and address of each person who purchased a ticket or donated money, along with the date and amount, the full name and address of each person, charity, or unit of government to whom any payment for expenses or disposition of funds has been made and the date, amount, and purpose of each expenditure. §111.012(2)(d)1., and 2., *Fla. Stat.* Therefore, private funds may be collected and used for the purpose of conducting an inaugural ball to honor the incoming governor. However, such funds must be accounted for accordingly.

With respect to a political party assisting in the transition of their nominee from Governor-elect to Governor, we see no reason why the party could not be a participant in this process. This could include employees who are paid by the party, sponsoring inaugural events, reimbursement of travel and related

expenses, and the use of equipment and services as set forth in your opinion request.

Pursuant to section 103.121, Florida Statutes, political parties have the power and duty to raise and expend party funds to make party nominations upon the authorization of the state or county executive committee chairman. §103.121(1), *Fla. Stat.* Once that nomination is made and the party's candidate wins election to office, we see no reason why the party cannot provide services to a transition effort as long as any expenses for such services are disclosed pursuant to section 106.29, Florida Statutes. Such expenditures further party unity and growth and, thus, strengthen the party's ability to promote itself and its candidates. A political party's support of its candidates does not necessarily end when the election is over and a political party has more than a legitimate interest in promoting its members who have been elected to leadership positions. If parties, by law, can assist their nominees while they are candidates, it makes little sense to conclude that they cannot assist their nominees once they are elected.

The Division has not often had the opportunity to discuss what appropriate party contributions and expenditures are. However, in *Op. Div. Elect. 92-11 ( June 24, 1992 )*, we approved of a fund raising effort by the Democratic Party whereby the party sold its contributor list to a long distance telephone company and the party provided its employees as part of the company's solicitation effort at no cost to the company. Potential customers would be offered discounted telephone service and would be made aware that part of the proceeds would go to the party. In *Op. Div. Elect. 90-10 (March 16, 1990)*, we recognized that Florida's "little hatch-act," section 104.31, Florida Statutes, could not be interpreted to limit the political activities of the Governor, members of the Cabinet, or members of the Legislature, with regard to any election of any kind or nature. The opinion went on to conclude that an elected public officer could host a campaign fund raiser for another candidate as long as the office holder did not use his office or authority to influence a person's choice of whether or not to make a contribution. Finally, although we are not the authority responsible for rendering interpretations of Florida's gift law, we note that excluded from the definition of gift are "...**any** expenditures by a political party." *112.312(12)(b)2., Fla. Stat.* (emphasis added). Therefore, it would appear that expenses incurred by the party in providing services to the Governor elect's transition effort are not includable as gifts provided by the party.

## SUMMARY

An inaugural ball held on or after the beginning of an officer's term qualifies as a testimonial affair and funds collected to defray the cost of conducting such an affair must be accounted for pursuant to section 111.012, Florida Statutes. An affair held prior to a nominee actually holding office does not qualify as a testimonial event. However, the nominee may wish to treat the affair as such an event. Political parties may, at their expense, provide assistance to the transition effort of its nominee who has been elected to office.