

**DE 00-01 - January 21, 2000**

**Deadline for Accepting Campaign Contributions  
§106.08(3)(a), Fla. Stat., Ch. 77-175, s. 48, Laws of Fla.**

*TO: The Honorable Alex Diaz de la Portilla, 1481 N.W. 22nd Street, Miami, Florida 33142*

*Prepared by: Division of Elections*

This opinion is pursuant to your request for an advisory opinion from the Division of Elections regarding the "cut-off" date for accepting campaign contributions. You are a candidate for State Senate District 34. Therefore, pursuant to section 106.23(2), Florida Statutes, the Division has authority to render this opinion to you. You have asked:

What is the last day on which a candidate with opposition can receive campaign contributions for a Tuesday election pursuant to the plain meaning of section 106.08(3)(a), Florida Statutes?

Section 106.08(3)(a), Florida Statutes, reads:

Any contribution received by a candidate with opposition in an election or by the campaign treasurer or deputy campaign treasurer of such candidate on the day of that election or less than five days prior to the day of that election must be returned by him or her to the person or committee contributing it and may not be used or expended by or on behalf of the candidate.

The answer to your specific question requires the interpretation of the phrase "on the day of that election or less than five days prior to the day of that election." That language was adopted by the legislature and became law in 1977. *Ch. 77-175, s. 48, Laws of Fla.*

In 1978, the Division of Elections issued two opinions interpreting this language. DE 78-44 and DE 78-45. In Division of Elections Opinion 78-44, the Division stated,

[t]he cut-off of contributions for all candidates, including those unopposed, is the fifth day preceding the general election. In 1978, no contributions may be received by any candidate, campaign treasurer, or deputy campaign treasurer later than the fifth day before the general election, or November 2, 1978."

The effect of this opinion was to construe the language of section 106.08(3)(a), Florida Statutes, to mean that for a Tuesday election the deadline for receiving a contribution is midnight on the Thursday preceding that election.

In Division of Elections Opinion 78-45, the Division stated, "any candidate may not receive contributions after the fifth day preceding an election in which he or she participates regardless of whether or not the candidate's name actually appears on the ballot."

This interpretation of section 106.08(3)(a), Florida Statutes, was extant until Division of Elections Opinion 97-03, in 1997. In this opinion, the Division interpreted section 106.08(3)(a), Florida Statutes, to mean that, "any contribution received after midnight of the day prior to the fifth day (midnight Wednesday) is a contribution received less than five full days preceding the election on Tuesday." (Emphasis added.) It must be noted that while DE 97-03 offered an interpretation that was inconsistent with DE 78-44 and DE 78-45, neither of the 1978 opinions were specifically rescinded by DE 97-03. The existence of valid but inconsistent opinions creates a potential for confusion among candidates who are in good faith trying to comply with the election laws.

After review of the interpretations of section 106.08(3)(a), Florida Statutes, set forth in the 1978 opinions and the 1997 opinion, the Division hereby rescinds DE 97-03. As indicated above, the language of this section has been in effect since 1977. The Division is unaware of any statutory changes or case law interpreting this section that would have required the Division to amend the interpretation of section 106.08(3)(a), Florida Statutes, set forth in DE 78-44 and DE 78-45. Further, the interpretation of this section in these opinions is consistent with the general rules of statutory construction discussed below.

In the computation of time, it is a general rule that a day is to be considered an indivisible unit or period of time. Fractions of a day are not considered in the computation of time and the day on which an act is done must be excluded or included in its entirety. *See Op. Atty. Gen. Fla. 57-132 (1957) and 55 Fla. Jur. 2d, Time § 11 (1984)*. Using this rule of computation, the time period "less than 5 days" would begin on the fourth full day prior to the election.

It is also a general rule of statutory construction that penal statutes must be strictly construed in favor of the person accused of violating the statute. A strict construction is a narrow construction, confirming the operation of the statute to matters affirmatively, definitely, or specifically within its terms, or to cases that fall fairly within its letter or the plain import of its language. *49 Fla. Jur. 2d, Statutes § 187 (1984)*. As a violation of section 106.08(3), Florida Statutes, may result in criminal prosecution, it is a penal statute. *See § 106.08(7)(a), Fla. Stat.* Under a narrow construction of section 106.08(3)(a), Florida Statutes, contributions received on the fifth day prior to an election are not contributions received "less than five days" prior to the election.

Finally, it is a general rule of statutory construction that where a statute is clear and unambiguous, a court or agency is not free to add words to steer it to a meaning and a limitation which its plain wording does not supply. *See James Talcott, Inc. v. Bank of Miami Beach, 143 So.2d 657 (Fla. 3rd DCA 1962)*. As such, it is inappropriate to insert the word "full" into the phrase "less than five days" where the plain wording of the statute does not suggest this meaning.

## **SUMMARY**

If a candidate is opposed on the ballot in an election, the last day the candidate may accept a campaign contribution is midnight of the fifth day prior to an election. If an election is on a Tuesday, this day is midnight the immediately preceding Thursday. Anything received after that time must be returned by

the candidate.