

April 3, 2003

Ms. Chance Irvine, Chair  
Florida Elections Commission  
107 W. Gaines Street  
Tallahassee, FL 32300-1050

**RE: DE 03-05 (Corrected Version)**  
Rescinding a Portion of DE 97-06 Relating to  
Reimbursements to Candidates from Campaign Funds; and  
Rescinding DE 98-16 Relating to Testimonials  
§106.011(1), §106.021(3), §106.07(4), §111.012, Florida  
Statutes

Dear Ms. Irvine:

This is in response to your request that the Division of Elections consider rescinding a portion of DE 97-06 as it relates to reimbursements to candidates from campaign accounts in light of recent legislative changes to the pertinent statutory sections. You are Chair of the Florida Elections Commission and pursuant to section 106.23(2), Florida Statutes, the Division of Elections has the authority to issue an opinion to you.

As you note in your letter, DE 97-06 in pertinent part states:

Except for petty cash expenditures allowed under section 106.12, Florida Statutes (1995), the only way that a candidate may make a campaign expenditure is by means of a bank check drawn on the primary campaign depository, pursuant to section 106.11(1), Florida Statutes (1995). Having said this, we recognize the applicability of section 106.07(4)(a)7, Florida Statutes (1995), which requires that candidates report any reimbursements of authorized expenses from their campaign accounts to themselves.

*We believe the purpose of this provision is to cover rare occurrences where the campaign must make an expenditure, but the campaign check book is not available. Such a situation could occur when a bill must be paid and the campaign has not received its first order of checks from the bank, or where, during the course of campaign travel, tolls or other miscellaneous expenses must*

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*be paid in cash and the candidate has failed to take money out of his petty cash fund for such purposes.* [Emphasis added]

As you also note in your letter, in 2002 the Florida Legislature amended section 106.021(3), Florida Statutes, to read as follows:

(3) Except for independent expenditures, no contribution or expenditure, including contributions or expenditures of a candidate or of the candidate's family, shall be directly or indirectly made or received in furtherance of the candidacy of any person for nomination or election to political office in the state or on behalf of any political committee except through the duly appointed campaign treasurer of the candidate or political committee; **however, a candidate or any other individual may be reimbursed for expenses incurred for travel, food and beverage, office supplies, and mementos expressing gratitude to campaign supporters by a check drawn upon the campaign account and reported pursuant to s. 106.07(4).** In addition, expenditures may be made directly by any political committee or political party regulated by chapter 103 for obtaining time, space, or services in or by any communications medium for the purpose of jointly endorsing three or more candidates, and any such expenditure shall not be considered a contribution or expenditure to or on behalf of any such candidates for the purposes of this chapter. [Emphasis added]

The 2002 Florida Legislature also amended subsection 106.07(4)(a)7, Florida Statutes, relating to the manner in which expenditures are to be reported to read as follows:

7. The full name and address of each person to whom an expenditure for personal services, salary, or reimbursement for authorized expenses **as provided in s. 106.021(3)** has been made and which is not otherwise reported, including the amount, date, and purpose of such expenditure. However, expenditures made from the petty cash fund provided for in s. 106.12 need not be reported individually. [Emphasis added]

As you state in your letter, prior to the 2002 legislative changes, the division's opinion in the above referenced portion of DE 97-06 was a reasonable interpretation of the then applicable statutory provisions with regard to when a candidate could use personal funds to pay campaign expenses and thereafter seek reimbursement of that expenditure from the campaign account.

However, section 106.021(3), Florida Statutes, now specifically delineates the circumstances under which a candidate or any other person may be reimbursed from the campaign account for expenses. Therefore, reimbursement is authorized only if the expense is incurred for travel, food and beverage, office supplies, or mementos expressing gratitude to campaign supporters. As a result, the above referenced portion of DE 97-06 is rescinded with regard to allowing reimbursements from the campaign account to candidates for campaign expenses paid from personal funds due to campaign account checkbook unavailability. Reimbursements can only be

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made from the campaign account for the categories of expenses specifically outlined in section 106.021(3).

Additionally, the Division of Elections rescinds DE 98-16 relating to testimonials. The Division of Elections' authority to issue opinions is limited to interpreting the provisions of the Florida Election Code. Pursuant to section 97.011, Florida Statutes, the Florida Election Code is comprised of Chapters 97 through 106 of the Florida Statutes. Section 111.012, Florida Statutes, relating to testimonials simply creates a purely ministerial role for the Division of Elections with regard to the receipt of filings. It does not confer any interpretive authority upon the division. Therefore, the Division of Elections is without authority to render opinions with regard to section 111.012, Florida Statutes, and as a result, DE 98-16 was issued in error and is hereby rescinded.

#### SUMMARY

DE 97-06 is rescinded with regard to allowing reimbursements to candidates for campaign expenses paid from personal funds just because the campaign checkbook is unavailable. Reimbursements from the campaign account can only be made for the categories of expenses specifically outlined in section 106.021(3), Florida Statutes.

Additionally, the Division of Elections is without authority to render opinions with regard to section 111.012, Florida Statutes, relating to testimonials and, as a result, DE 98-16 was issued in error and is hereby rescinded.

Sincerely,

Edward C. Kast  
Director, Division of Elections

Prepared by:  
Sharon D. Larson  
Assistant General Counsel

EK/SDL/cm