

October 5, 2007

The Honorable James S. Bennett
St. Petersburg City Council
P.O. Box 724
St. Petersburg, Florida 33731

RE: DE 07-07
Candidates and Campaign Financing –
Unopposed candidate
§§ 101.151(7), 106.011(15) and 106.08(3),
Florida Statutes

Dear Councilman Bennett:

This letter responds to a request by Cheryl E. Forchilli, Esquire, on your behalf for an advisory opinion regarding your re-election campaign for St. Petersburg City Council, District 5. Because you have a question about compliance with Florida's election laws with respect to your ability to receive campaign contributions, the Division has the authority to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2007).

You ran in a primary election on September 11, 2007, against two other candidates. You received the most votes in the election and, pursuant to the City of St. Petersburg's charter, you state that you and the candidate receiving the second highest number of votes were to be on the ballot for the November 6, 2007 municipal general election. On September 24th, the other candidate withdrew from the race. Also, you indicate that based upon the results of the primary and the subsequent withdrawal by the candidate, the city code provides that the general election ballot will offer voters two choices for the District 5 seat: yourself and "new election." If "new election" receives the majority of votes in the November election, then a new primary and general election will held for the District 5 seat.

You essentially ask the following question:

Does s. 106.08(3)(b), Florida Statutes (2007), prohibit you from continuing to accept and use contributions subsequent to the withdrawal of your opponent where the municipal code requires that you run against the phrase "new election" on the ballot?

The short answer is “No.”¹

Section 106.08(3)(b), Florida Statutes (2007), in relevant part for your situation, states:

... any contribution received by a candidate or by the campaign treasurer or a deputy campaign treasurer of a candidate ... after the date the candidate ... becomes unopposed, ... must be returned to the person or committee contributing it and may not be used or expended by or on behalf of the candidate.

So, the general rule is that once a candidate becomes unopposed, the candidate must return any contribution received after the candidate becomes unopposed. Section 106.011(15), Florida Statutes (2007), states in pertinent part:

"Unopposed candidate" means a candidate for nomination or election to an office who, after the last day on which any person, including a write-in candidate, may qualify, is without opposition in the election at which the office is to be filled or who is without such opposition after such date as a result of ... withdrawal by other candidates seeking the same office.... [Emphasis supplied.]

The key in this definition regarding your circumstances is the phrase, “without opposition.” Under the Election Code, if a candidate is truly an “unopposed candidate,” that is, “one without opposition,” the candidate’s name will not appear on the ballot. Section 101.151(7), Florida Statutes provides:

Except for justices or judges seeking retention, the names of unopposed candidates shall not appear on the general election ballot. Each unopposed candidate shall be deemed to have voted for himself or herself.

Because your name will appear on the ballot, along with the choice of “new election” in your race, you are not “without opposition;” therefore, under Florida’s Election Code you are not an “unopposed candidate,” nor have you “become unopposed” for purposes of receiving and using contributions. This interpretation is logical; otherwise, a political committee could form against you to have you defeated in the general election and you would be without authority to accept contributions to oppose the political committee’s efforts. Your situation is similar to a judge who is facing a retention vote – while the judge has no named opposition, the voters may elect to vote “no” regarding the judge’s retention. A judge facing a retention vote is not precluded from accepting and using contributions to retain his office. Section 105.08(2), Florida Statutes (2007).

For the foregoing reasons, under the Election Code, you are not precluded from continuing to accept and use contributions during your campaign for election at the general election.

¹ The Division of Elections is limited to providing advisory opinions on the provisions and possible violations of state election laws. Section 106.23(2), Florida Statutes (2007). This opinion should not be viewed as an interpretation of the municipal charter or code.

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SUMMARY

For a candidate to be an unopposed candidate under Florida's Election Code, the candidate must be without opposition and, in such a case, the candidate's name will not appear on the ballot. If the candidate's name appears on the ballot with an alternative choice, such as voting for a "new election" in the candidate's race, the candidate is opposed and may accept and use contributions toward his or her election.

Sincerely,

Amy K. Tuck
Director, Division of Elections

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cc: Cheryl E. Forchilli, Esq.