



 **COPY**

FLORIDA DEPARTMENT *of* STATE

CHARLIE CRIST
Governor

KURT S. BROWNING
Secretary of State

September 26, 2008

Ms. Debra E. Eastman
Town Clerk, Town of Miami Lakes
15700 NW 67th Avenue
Miami Lakes, Florida 33014

RE: DE 08-10
Canvassing Board – Disqualification of Member
§ 102.141(1), Florida Statutes

Dear Ms. Eastman:

This letter responds to your request for an advisory opinion. You are the Town Clerk for the Town of Miami Lakes, and you serve as the supervisor of elections for its municipal elections. As a local officer having election-related duties, the Division has the authority to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2008). In the absence of a town charter provision, you state that Miami Lakes follows section 102.141, Florida Statutes (2008), concerning the composition and selection of its canvassing board members.

You ask essentially the following question:

Does a contribution by a canvassing board member to a candidate in a contested race to be canvassed by the canvassing board member disqualify that member from serving on the canvassing board under the provisions of section 102.141(1), Florida Statutes (2008)?

The short answer to your question is “no” if the contribution is the extent of the canvassing board member’s participation in the campaign of the candidate.

Section 102.141(1)(a)-(d), Florida Statutes (2008), disqualifies a canvassing board member or a substitute member of a canvassing board if the member is a candidate with opposition in the election being canvassed or is an active participant in the campaign or candidacy of any candidate who has opposition in the election being canvassed. The Election Code does not define “active participant,” nor have we found it defined in any Florida appellate case law or Attorney General Opinions. We believe the focus must be on the modifier “active” in the phrase “active participant.” If the member is a passive participant, the member would not be disqualified from being a member of a canvassing board. We do not believe that a monetary

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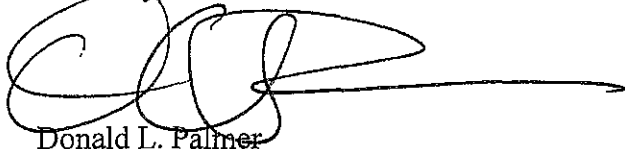
contribution to a candidate's campaign by itself makes a canvassing board member an "active participant" in the campaign.

Consistent with prior informal opinions provided by the Division of Elections, we interpret being an "active participant" in the campaign or candidacy of any candidate who has opposition in the election being canvassed to require something beyond giving of a campaign contribution.

SUMMARY

A contribution by a canvassing board member to a candidate in a contested race to be canvassed by the canvassing board member by itself does not disqualify that member from serving on the canvassing board. To be disqualified, the member must be an "active participant," which means something more than the mere giving of a campaign contribution.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Palmer', with a long horizontal line extending to the right.

Donald L. Palmer
Director, Division of Elections

Prepared by:
Gary J. Holland
Assistant General Counsel