



## FLORIDA DEPARTMENT *of* STATE

**CHARLIE CRIST**  
Governor

**KURT S. BROWNING**  
Secretary of State

October 15, 2009

Honorable Sharon L. Zeller  
County Court Judge  
Broward County Courthouse  
Fort Lauderdale, Florida 33301

RE: DE 09-07  
Canvassing Board – Disqualification of Member;  
§§ 102.141(1), Florida Statutes

Dear Judge Zeller:

This letter responds to your request for an advisory opinion. You are the Administrative County Judge for Broward County and, as such, you serve as the chair of the County Canvassing Board. As a local officer having election-related duties, the Division of Elections has authority to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2009).

Section 102.141(1)(a)-(d), Florida Statutes (2009), 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.

You ask if whether any or all of the following activities by a member of the canvassing board constitute being an “active participant” in the campaign or candidacy of any candidate who has opposition in the election being canvassed:

- Being a member of an election or re-election committee for a candidate
- Public endorsement with or without financial support of a candidate
- Holding campaign signs, wearing a campaign tee-shirt, or other public display of support for a candidate
- Signing endorsement card for a candidate
- Attending a fundraiser for a candidate
- Chairing or co-chairing an ongoing election campaign or fundraiser for the candidate

As we stated in *Division of Elections Opinion* 08-10 (September 26, 2008):

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 contribution to a candidate’s campaign by itself makes a canvassing board member an “active participant” in the campaign.

Your questions now cause us to further define what makes one an “active participant” under section 102.141, Florida Statutes. Prior Division of Elections’ informal opinions concerning this section have interpreted being an “active participant” to include activities such as publicly endorsing a candidate, displaying a candidate’s campaign signs, or soliciting votes for a candidate. Stated more broadly, an “active participant” in a campaign is one who undertakes an action intentionally to demonstrate or generate public support of the candidate. This does not include merely making a campaign contribution. While a contribution to a candidate becomes a public record by operation of law (*see* section 106.0706, Florida Statutes (2009)), it cannot be said the donor is making the contribution for the intentional purpose of demonstrating or generating *public* support for the candidate. In fact, the donation does not become a public record until the candidate files the campaign finance reports on the required due dates, which may be months after the contribution is made. *See* § 106.07(1), Florida Statutes (2009). Therefore, one who merely makes a campaign contribution is a “passive participant” in a candidate’s campaign. *Division of Elections Opinion* 08-10 (September 26, 2008).

Accordingly, to address your specific questions: Being an “active participant” would include being a member of an election or re-election committee for a candidate; public endorsement with or without financial support of a candidate; holding campaign signs, wearing a campaign tee-shirt, or other public display of support for a candidate; signing an endorsement card for a candidate; attending a candidate’s campaign fundraiser; or chairing or co-chairing an ongoing election campaign or fundraiser for a candidate. In each of these activities one is undertaking an action intentionally to demonstrate or generate public support for the candidate.

#### SUMMARY

To be disqualified as a canvassing board member, the member must be an “active participant” in the campaign or candidacy of any candidate who has opposition in the election being canvassed. An “active participant” means that a canvassing board member undertakes an effort intentionally to demonstrate or generate public support of a candidate beyond merely making a campaign contribution.

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The following activities would make a canvassing board member an "active participant" in the candidate's campaign or candidacy: Being a member of an election or re-election committee for a candidate, public endorsement with or without financial support of a candidate; holding campaign signs, wearing a campaign tee-shirt, or other public display of support for a candidate; signing an endorsement card for a candidate; attending a candidate's campaign fundraiser; or chairing or co-chairing an ongoing election campaign or fundraiser for a candidate. However, the mere giving of a campaign contribution would not make a canvassing board member an "active participant."

Sincerely,

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

Donald L. Palmer  
Director, Division of Elections