



FLORIDA DEPARTMENT OF STATE

CHARLIE CRIST
Governor

DAWN K. ROBERTS
Interim Secretary of State

May 10, 2010

Ms. Dawn K. Roberts
Interim Secretary of State
R.A. Gray Building
500 S. Bronough Street
Tallahassee, Florida 32399-0250

RE: DE 10-04
Rescinding Opinions – DE 77-11, DE 88-41,
DE 01-04, and a portion of DE 82-22

Dear Secretary Roberts:

Your predecessor requested that the Division of Elections review its prior advisory opinions to determine if any opinions are incorrect or misleading to researchers such that they should be rescinded. As Secretary of State and Florida's chief election officer, the Division has the authority to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2009).

All opinions posted on the Division's website are prefaced with a statement that the opinions represent an interpretation of the law applicable to a particular factual situation at the time the opinion was issued and are binding solely on the persons who requested the opinions. The statement cautions readers to consult current law before drawing any legal conclusions from the opinions.

Nevertheless, following our review of the historical advisory opinions, we believe the cautionary note is insufficient to ensure that researchers are not misled by the opinions discussed below. Therefore, the Division hereby rescinds these opinions or the specified portion therein for the reasons set forth below.

Division of Elections Opinion 77-11 (April 13, 1977): A candidate for town council was not eligible to run because he was not a qualified elector of the town; yet, the candidate (the incumbent officeholder) won the election over another candidate. The unsuccessful candidate desired to know if he had been elected or whether the election should be considered a nullity. The Division stated that a new election must be held. Upon further consideration, the Division now believes it lacked authority under the Election Code to make such a declaration and that the proper legal recourse available to the unsuccessful candidate would have been to file a contest of election pursuant to section 102.168, Florida Statutes.

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Division of Elections Opinion 82-22 (August 31, 1982): Based upon the provisions of section 99.092(1), Florida Statutes, this opinion concluded the Supervisor of Elections had no authority to return qualifying fees, except as statutorily enumerated, *e.g.*, unless the candidate withdraws his or her candidacy before the last date to qualify. Upon further consideration, the Division now believes the appropriate interpretation of this statute is that it prohibits the return of the qualifying fee to candidates who actually qualify for the office sought, but not those candidates who fail to qualify because of incomplete qualifying papers. Therefore, with respect to a candidate who submits a qualifying fee but who otherwise fails to qualify for the office, the qualifying officer should refund the candidate's qualifying fee. The portion of the opinion relating to the response to question #1 is hereby rescinded.

Division of Elections Opinion 88-41 (September 29, 1998): This opinion concerned an interpretation of a time period specified in the municipal recall statute. Without commenting on the correctness of the ultimate conclusion reached in the opinion, we find it problematic that the opinion looked to the Florida Rules of Civil Procedure to interpret the time frames contained in the Election Code. Rather we believe that as with other statutes governing related subject matter, the Election Code should be interpreted by reference to traditional methods of statutory interpretation.

Division of Elections Opinion 01-04 (August 20, 2001): This opinion interpreted various provisions of the United States Code and equated U.S. Department of Justice (DOJ) attorneys and their staff to be "law enforcement officers" for purposes of being allowed within polling places during elections under section 102.031(3), Florida Statutes. Upon further consideration, we do not believe DOJ attorneys and their staff constitute "law enforcement officers" under Florida Law (*see, e.g.*, the definition of "law enforcement officer" in sections 784.07, 901.1505, and 943.10, Florida Statutes (2009)). Under Florida law, a law enforcement officer is generally one who is vested with the authority to carry firearms and make arrests. Attorneys and their staff do not typically have such authority, so a blanket statement equating DOJ attorneys and their staff to law enforcement officers for purposes of section 102.031(3), Florida Statutes, was inappropriate.

SUMMARY

Division of Elections Opinion 77-11 (April 13, 1977), *Division of Elections Opinion 88-41* (September 29, 1998), *Division of Elections Opinion 01-04* (August 20, 2001), and the response to Question #1 in *Division of Elections Opinion 82-22* (August 31, 1982) are rescinded.

Sincerely,



Donald L. Palmer
Director, Division of Elections