



FLORIDA DEPARTMENT *of* STATE

CHARLIE CRIST
Governor

DAWN K. ROBERTS
Interim Secretary of State

July 6, 2010

Mr. Robert Anderson
P.O. Box 1778
Lehigh Acres, Florida 33970

RE: DE 10 - 08
Contributions; Nonpartisan Special District Candidates
§ 106.08(1), Florida Statutes.

Dear Mr. Anderson:

This letter responds to your request for an advisory opinion. Because you are a candidate for a special district fire control district seat and have a question relating to the provisions of Florida's Election Code, the Division of Elections has authority to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2009).

You inquire about the campaign contribution limits placed upon nonpartisan special district candidates like yourself whose races will not appear on the primary ballot but only on the general election ballot. You essentially ask: If an opposed candidate's name in a special district race will appear only on the general election ballot, are the primary and general elections treated separately for campaign contributions purposes? The short answer is "yes."

Section 106.08(1), Florida Statutes (2009), in relevant part, provides:

(1)(a) Except for political parties, no person, political committee, or committee of continuous existence may, in any election, make contributions in excess of \$500 to any candidate for election to or retention in office or to any political committee supporting or opposing one or more candidates. Candidates for the offices of Governor and Lieutenant Governor on the same ticket are considered a single candidate for the purpose of this section.

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(c) The contribution limits of this subsection apply to each election. For purposes of this subsection, the primary election and general election are separate elections so long as the candidate is not an unopposed candidate as defined in s. 106.011(15). However, for the purpose of contribution limits with respect to

candidates for retention as a justice or judge, there is only one election, which is the general election.

Section 106.011(15), Florida Statutes, states:

(15) "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 any primary election or of withdrawal by other candidates seeking the same office. A candidate is not an unopposed candidate if there is a vacancy to be filled under s. 100.111(4), if there is a legal proceeding pending regarding the right to a ballot position for the office sought by the candidate, or if the candidate is seeking retention as a justice or judge.

So, unless the candidate is an unopposed candidate, a campaign contribution to a candidate may not exceed \$500 per election; however, the primary election and general election are treated as separate elections. The Florida Legislature has designated only one exception to the law that primary and general elections are treated separately for campaign contributions, *i.e.*, when there is a judicial retention race. The Legislature could have also created another exception to the contribution limits for an opposed candidate whose name appears only on the general election ballot, but it did not do so. When a law expressly describes a particular situation to which something applies, an inference may be drawn that what is not included was intended to be omitted or excluded. *E.g., Maggio v. Fla. Dep't of Labor & Emp. Sec.*, 899 So. 2d 1074, 1080 (Fla. 2005) (applying doctrine of *expressio unius est exclusio alterius*, the mention of one thing in a statute implies the exclusion of another.) Application of this principle suggests that by expressly excluding judicial retention races from contributions being treated separately for primary and general elections, the Legislature expressed an intention that separate contribution limits exist for all other races -- \$500 before the primary election and another \$500 after the primary but before the general election. This conclusion applies regardless whether an opposed candidate in the general election has his or her name appear on the primary ballot.¹

Consistent with the foregoing interpretation, the Division of Elections' *2010 Candidate and Campaign Treasurer Handbook* (July 2010),² at page 27, provides the following guidance concerning contribution limits during the current election cycle for a candidate who is opposed only in the general election:

If opposed in the general election only the candidate may accept:

¹ See, *e.g.*, Division of Elections Opinion 92-20 (October 19, 1992), which in interpreting earlier versions of the relevant statutes when Florida had first and second primary elections, concluded that a candidate for public office, except for a judicial office, who is an opposed candidate in the general election, may receive the maximum contributions allowable for the first primary, second primary, and general election.

² The Handbook is available at <http://election.dos.state.fl.us/publications/publications.shtml>.

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\$500 up through the day of the primary election on **August 24, 2010**
\$500 between August 25 and midnight on **October 28, 2010**³

SUMMARY

The primary and general elections are treated separately for campaign contributions purposes when an opposed candidate's name in a nonpartisan special district race appears only on the general election ballot. The campaign contribution limits for an opposed candidate whose name will appear only on the general election ballot is \$500 before the primary election and \$500 after the primary election until five days before the general election.

Sincerely,

A handwritten signature in black ink, appearing to be 'DLP', with a long horizontal stroke extending to the right.

Donald L. Palmer
Director, Division of Elections

³ This date is five days before the general election date. Any contribution received on the day of the election or less than five days before the election by a candidate with opposition in that election may not use the contribution and must return it. § 106.08(3)(a), Fla. Stat. (2009).