


FYI

FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

July 21, 2015

Ms. Patricia A. Cerny
City Clerk, City of Hollywood
Post Office Box 229045
Hollywood, Florida 33022-9045

Re: DE 15-02 Campaign Financing;
Municipalities – Applicability of Election
Code; Municipal Reporting Schedule – §§
100.3605(1) and 106.07(1), Florida Statutes

Dear Ms. Cerny:

This letter responds to your request, as City Clerk and through counsel, for an advisory opinion on whether the campaign treasurer reporting schedule in section 106.07(1), Florida Statutes, effectively preempts your city's charter provisions setting campaign treasurer report filing deadlines for municipal elections. Because you are a local officer with election-related duties, the Division of Elections is authorized to issue an opinion to you pursuant to section 106.23(2), Florida Statutes.

As your counsel points out, the campaign finance reporting schedule for municipal candidates set by your city's charter "differs" from the reporting schedule in section 106.07. Your city's charter requires "[e]ach campaign treasurer designated by a candidate pursuant to state law" to file reports on the tenth day following the end of each calendar quarter.¹ By contrast, state law requires a campaign treasurer, from the time of his or her appointment, to file a report on the tenth day following the end of each calendar month.²

Section 97.0115, Florida Statutes, provides that "[a]ll matters set forth in chapters 97-105 are preempted to the state." Notably, this provision does not include chapter 106 of the Election Code, so the campaign finance matters addressed there are not preempted to the state. Section 100.3605(1), Florida Statutes, however, states as follows:

The Florida Election Code, chapters 97-106, shall govern the conduct of a municipality's election in the absence of an applicable special act, charter, or ordinance provision. *No charter or ordinance*

¹ See City of Hollywood Charter § 3.12(d)(1).

² See § 106.07(1), Fla. Stat.

Division of Elections

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*provision shall be adopted which conflicts with or exempts a municipality from any provision in the Florida Election Code that expressly applies to municipalities.*³

(emphasis supplied). Simply put, even though campaign finance matters are not expressly preempted to the state, if a provision in chapter 106 expressly applies to municipalities, section 3.12(d)(1) of your city's charter will not be enforceable if it "conflicts" with that provision or exempts the city from compliance with it.

The reporting schedule in section 106.07, Florida Statutes, is the pertinent provision here, and it "expressly applies" to municipalities. Section 106.07 requires each "campaign treasurer" who is designated by a "candidate" or "political committee" to file monthly reports of contributions and expenditures.⁴ In the definition section of chapter 106, "campaign treasurer" means "an individual appointed by a candidate or political committee as provided in this chapter."⁵ "Candidate," in part, means "[a] person who receives contributions or makes expenditures ... with a view to bring about his or her nomination or election to, or retention in, public office."⁶ "Public office" is a "state, county, *municipal*, or school or other district office or position that is filled by vote of the electors."⁷ And an "election" is "a primary election, special primary election, general election, special election, *or municipal election* held in this state for the purpose of nominating or electing candidates to public office"⁸

These definitions indicate that the terms "campaign treasurer" and "candidate," when used in section 106.07, "expressly apply" to municipal elections when they are used in chapter 106, because the terms "election" and "public office"—to which "campaign treasurer" and "candidate" directly relate—expressly include municipal elections and municipal offices. In turn, the reporting schedule in section 106.07(1) to which campaign treasurers are required to adhere also expressly applies to municipalities. Indeed, section 3.12(d)(1) of your city's charter implicitly acknowledges this application by its express adoption of the state law definition for "campaign treasurer": "Each campaign treasurer designated by a candidate *pursuant to State law*" (emphasis supplied).

The prior advisory opinions of the Division are consistent with this view. *See Div. of Elections Op. 77-37* (Dec. 20, 1977); *Div. of Elections Op. 88-12* (Apr. 6, 1988); *Div. of Elections Op. 98-03* (Mar. 10, 1998). In *Division of Elections Opinions 77-37* and *88-12*, the Division noted that the definitions of the terms "election" and "public office" found in section 106.011, Florida Statutes, include municipalities, and that the Legislature necessarily intended for chapter 106 to apply to municipalities. In *Division of Elections Opinion 98-03*, the Division evaluated the ability of municipal candidates to meet a reporting schedule set in section 106.07(1). The Division

³ See § 97.0115, Fla. Stat. ("The conduct of municipal elections shall be governed by s. 100.3605").

⁴ The statute also distinguishes between a "statewide candidate" in subsection (1)(a) and "[a]ny other candidate" in subsection (1)(b).

⁵ § 106.011(2), Fla. Stat.

⁶ § 106.011(3)(c), Fla. Stat.

⁷ § 106.011(17), Fla. Stat.

⁸ § 106.011(7), Fla. Stat. (emphasis supplied).

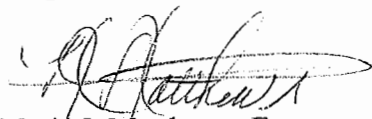
concluded in the opinion that “[l]ike municipal elections, all required reports that are capable of being filed, must be filed in accordance with section 106.07(1)(a), Florida Statutes.”

Because section 106.07(1) expressly applies to municipalities, section 100.3605(1) precludes your city from adopting local reporting obligations for campaign treasurers that conflict with state reporting obligations or that exempt treasurers from application of those state obligations. However, your city may adopt *additional* reporting obligations, provided they do not conflict with the state obligations. Whether section 3.12(d)(1) of your city’s charter “conflicts” with section 106.07(1), or exempts the city from the provision’s application, is a question requiring legal interpretation of local law, which your city attorney must address. If your city attorney concludes that there is no conflict or incompatibility between the reporting requirements of section 106.07(1), Florida Statutes, and section 3.12(d)(1) of your city’s charter, then your local candidates’ campaign treasurers presumably would need to comply with both reporting schedules.

SUMMARY

Chapter 106 of the Election Code does not expressly preempt the City of Hollywood’s charter provision setting campaign treasurer reporting filing deadlines for city elections. However, the reporting schedule in section 106.07(1) expressly applies to the city’s elections, because under the definitions set out in section 106.011, the “campaign treasurers” to whom that schedule applies include those appointed by candidates for office in municipal elections. By operation of section 100.3605, the city may not establish reporting obligations that conflict with those of section 106.07(1) or exempt treasurers from their application; but it may adopt additional local reporting obligations that do not conflict with those of section 106.07(1).

Respectfully,

A handwritten signature in dark ink, appearing to read "Maria I. Matthews", with a long, sweeping horizontal flourish extending to the right.

Maria I. Matthews, Esq.
Director, Division of Elections