



FLORIDA DEPARTMENT OF STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

July 14, 2016

Mr. James Wright III
Jwrightmg16@gmail.com

Re: DE 16-09 Campaign Financing –
Eliminated Candidate; Disposition of Surplus
Funds – §§ 99.061, 106.141, Florida Statutes

Dear Mr. Wright:

As a candidate for municipal office, you have requested an advisory opinion regarding whether the qualifying officer's decision to refuse to accept your qualifying papers as complete requires you to stop campaigning and dispose of funds in your campaign account. Because you are a candidate proposing to take certain actions with respect to the Florida Election Code, the Division is authorized to issue an opinion pursuant to section 106.23(2), Florida Statutes.

FACTS

As a candidate for mayor for the city of Miami Gardens, you state that you submitted your qualifying papers to the qualifying officer, who rejected your qualifying check due to it being "returned" by the bank. You indicate that the qualifying officer has removed you from the ballot, and that you intend to file a court action to dispute this decision by the qualifying officer. You ask several questions regarding whether you may continue to campaign in the meantime, whether you may continue to utilize your campaign account, whether you may continue to raise money for your campaign, and whether you need to file a termination report at this time.

ANALYSIS

Although you ask several questions, the essential issue is whether the qualifying officer's refusal to accept your qualifying check was a triggering event requiring you to stop accepting contributions, close your campaign account, and dispose of surplus funds pursuant to section 106.141, Florida Statutes.

Division of Elections
R.A. Gray Building, Suite 316 • 500 South Bronough Street • Tallahassee, Florida 32399
850.245.6200 • 850.245.6217 (Fax) DOS.MyFlorida.com/elections



Section 106.141, Florida Statutes, requires a candidate to stop accepting contributions, close the campaign account, and dispose of surplus funds if one of the four “triggering” events occurs, as follows:

Except as provided in subsection (6), each candidate who *withdraws his or her candidacy, becomes an unopposed candidate, or is eliminated as a candidate or elected to office* shall, within 90 days, dispose of the funds on deposit in his or her campaign account and file a report reflecting the disposition of all remaining funds. Such candidate may not accept any contributions, nor may any person accept contributions on behalf of such candidate, after the candidate withdraws his or her candidacy, becomes unopposed, or is eliminated or elected. . . .

§ 106.141(1), Fla. Stat. (emphasis supplied). You did not withdraw your candidacy, become an unopposed candidate, or become elected, so the only question is whether you were “eliminated as a candidate” under this statute, in which case you would have to comply with section 106.141.

To qualify for office, Florida law requires the candidate to present to the qualifying officer several documents, including a qualifying check. *See* § 99.061(7), Fla. Stat. (listing five required qualifying documents, including a “properly executed check drawn upon the candidate’s campaign account . . .”). In reviewing qualifying papers, the filing officer performs a ministerial function and reviews the papers to determine whether all items required have been properly filed and whether each item is complete on its face. § 99.061(7)(c), Fla. Stat. The filing officer may not determine whether the contents of the qualifying papers are accurate. *Id.* If the qualifying officer determines that all items required by section 99.061 have not been received or are not complete by the end of the qualifying period, the candidate is deemed to not have qualified for office. *Cf.* § 99.061(7)(a), Fla. Stat. Put another way, if the qualifying officer determines that the candidate did not qualify, then the candidate is “eliminated as a candidate.” *Cf. id.*; § 106.141(1), Fla. Stat.

In this situation, you indicate that your filing officer has determined that your qualifying papers were incomplete because your qualifying check was “returned.” Therefore, it is the Division’s opinion that until a court enters an injunction or other order at least temporarily qualifying you as a candidate, you have been “eliminated as a candidate” for purposes of section 106.141 and must therefore stop accepting contributions, close your campaign account, and otherwise comply with section 106.141.¹

SUMMARY

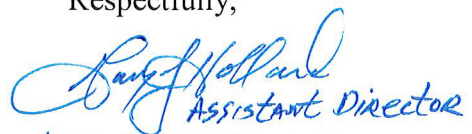
For purposes of section 106.141, Florida Statutes, a person is “eliminated as a candidate” when the time to qualify has run and the qualifying officer determines that the person has failed to qualify for office. Until a court orders otherwise, a person who has been “eliminated as a

¹ In your request for advisory opinion, you make no reference to any local provisions. The Division renders this opinion with the assumption that there are no local provisions that would change the Division’s analysis.

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candidate” must stop accepting contributions, close the campaign account, and otherwise comply with section 106.141.

Respectfully,


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