



FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

October 5, 2016

Mr. Michael J. Welch
1923 Golfside Village Drive
Lehigh Acres, Florida 33936

Re: DE 16-13 Advertising – Candidates
Using “Re-Elect”; § 106.143(6), Florida
Statutes

Dear Mr. Welch:

As a candidate for special district office, you have requested an advisory opinion regarding whether you may use the word “re-elect” on your political advertisements even though the title of the office for which you are the incumbent has changed. 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

You state that in November 2012 you were re-elected to seat 1 of the East County Water Control District, a special district office. You also state that this special district was abolished by the Legislature in 2015, and that it was replaced by the Lehigh Acres Municipal Services Improvement District, with the current board members of the old special district being “transferred” to the new district without any new elections.¹ You now seek election to the Lehigh

¹ See Ch. 2015-202, Laws of Fla. (dissolving the East County Water Control District; creating the Lehigh Acres Municipal Services Improvement District; providing that “the members of the former Board of Commissioners of the East County Water Control District shall constitute the five-member Board of District Commissioners of the Lehigh Acres Municipal Services Improvement District”; and transferring all “assets, contracts, obligations, and liabilities” of the East County Water Control District to the Lehigh Acres Municipal Services Improvement District).

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Acres Municipal Services Improvement District and ask whether your political advertisements may use the word “re-elect.”

ANALYSIS

Section 106.143, Florida Statutes, allows incumbents to use the word “re-elect” on political advertisements but prohibits non-incumbents from doing so, as follows:

No political advertisement of a candidate who is not an incumbent of the office for which the candidate is running shall use the word “re-elect.” Additionally, such advertisement must include the word “for” between the candidate’s name and the office for which the candidate is running, in order that incumbency is not implied. This subsection does not apply to bumper stickers or items designed to be worn by a person.

§ 106.143(6), Fla. Stat.

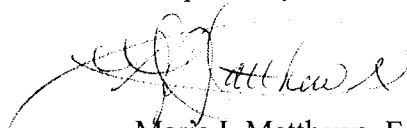
The sole issue, then, is whether you are an “incumbent of the office” for which you are seeking election for purposes of section 106.143. The Election Code defines the term “public office” as “a state, county, municipal, or school or other district office or position that is filled by vote of the electors.” § 106.011(17), Fla. Stat. The Election Code does not define “incumbent,” but the term is generally understood to mean “[s]omeone who holds an official post, [especially] a political one.” *See Black’s Law Dictionary* (10th ed. 2014).

Thus, whether a person is an “incumbent” turns on whether that person currently *holds* a particular office, and not on whether the person was previously *elected* to that office. *See Div. of Elections Op. 01-02* (Apr. 4, 2001) (opining that an appointed supervisor of elections could use the word “re-elect” on political advertisements because even though he was never elected to the office, he was in present possession of the office, and thus he was an “incumbent” for purposes of section 106.143, Florida Statutes); *see also Div. of Elections Op. 90-47* (Dec. 18, 1990). Because you currently hold the special district office to which you seek election, you are the “incumbent” for that office; and therefore, you may use the word “re-elect” on your political advertisements. *See* § 106.143(6), Fla. Stat.

SUMMARY

A person who currently holds a particular public office is the “incumbent” for that office for purposes of the political advertisement requirements in section 106.143(6), Florida Statutes.

Respectfully,



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