



FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

January 23, 2018

Ms. Dixie Gualtieri
Deputy Town Clerk, Town of Hypoluxo
7580 South Federal Highway
Hypoluxo, Florida 33463-6034

Re: DE 18-04 Ballots – Municipalities;
Qualifying – Statement of Financial Interests
as Qualifying Document – §§ 99.061(5) and
(7); and 100.3605(1), Florida Statutes

Dear Ms. Gualtieri:

This letter responds to your request for an advisory opinion regarding the status of a mayoral candidate who failed to file the Commission on Ethics Form 1, Statement of Financial Interests (hereinafter, "CE Form 1"), at the time of qualifying, but filed it the day after the qualifying period closed.¹ As the Deputy Town Clerk, you are responsible for administering the Town's elections. As such, you are a local officer having election-related duties and the Division of Elections is authorized to issue an opinion to you pursuant to section 106.23(2), Florida Statutes (2017).

FACTS

Your request for an advisory opinion essentially provides the primary fact that the candidate did not file his CE Form 1 until the day after the close of the qualifying period. In the candidate's request for an opinion (*see* footnote 1 to this opinion), the candidate represents the following:

- That the qualifying period was from noon, Tuesday, January 2, 2018, through noon, Wednesday, January 10, 2018.

¹ The Division of Election also received a similar request for an opinion from David Karpinia, who indicates that he is the candidate to whom you refer in your opinion. Because his request concerns the same matter, we are answering both requests with this one opinion. We include in this opinion some facts included in his request that were not contained in your request. We defer to you to decide if his factual recitations are accurate.

- That he submitted his qualifying items and that you verbally indicated that he was qualified as a candidate for Mayor.
- That at the time of submitting the qualifying papers, you and he discussed whether the filing of the CE Form 1 was required and that you indicated that you would check with the Town Attorney and provide clarification.
- That you instructed him to “hold the filing of Form 1 and provide [it] in the morning if necessary.”
- That he received an email from you, dated January 10, 2018 at 3:59 PM (after the close of the qualifying period) in which you indicated that the Town Attorney stated, “My understanding is that each candidate was required to file a Form 1 at the time they qualified,” and
- That immediately upon the Town Hall office opening the next day, the candidate provided you the CE Form 1.

ANALYSIS

Section 100.3605, Florida Statutes (2017), provides:

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

In your request, you indicate that the Town Charter provides the following:

Candidates for the office Town Council member and Mayor shall qualify for such office by the filing of a written notice of candidacy and the required filing fee with the Town Clerk in accordance with the county unified election code *and meet all other requirements as provided by law.* [Emphasis supplied.]

We also note that section 99.061(5), Florida Statutes (2017), indicates:

At the time of qualifying for office, each candidate for a constitutional office shall file a full and public disclosure of financial interests pursuant to s. 8, Art. II of the State Constitution, which must be verified under oath or affirmation pursuant to s. 92.525(1)(a), and *a candidate for any other office, including local elective office, shall file a statement of financial interests pursuant to s. 112.3145.* [Emphasis supplied.]

Thus, by its terms, this section applies to “local elective offices,” which we interpret to include elective municipal offices. This interpretation is consistent with the CE Form 1’s underlying statute, section 112.3145, Florida Statutes (2017).² That statute mandates a person seeking election to a local elective office “shall file a statement of financial interests together with, and at the same

² “Local officer” is defined as: “Every person who is elected to office in any political subdivision of the state ...” § 112.3145(1)(a), Fla. Stat. (2017).

time he or she files, qualifying papers.”³ Because subsection (5) of section 99.061 expressly applies to municipalities, a municipality may not change its applicability to municipal candidates under section 100.3605(1), Florida Statutes.

We further note that section 99.061(7)(a)5., Florida Statutes (2017), mandates that one of the items required to be received by the qualifying officer prior to the end of the qualifying period is the CE Form 1. While this particular subparagraph does not “expressly” apply to municipalities, when the Town Charter provision, which states the candidate shall qualify by filing two specific items “and meet all other requirements as provided by law,” is read in conjunction with section 100.3605, Florida Statutes (2017), the filing of the CE Form 1 is a qualifying item applicable to your town’s elections. Therefore, we conclude that a candidate for Mayor in Hypoluxo must submit the CE Form 1 by the end of the qualifying period before a candidate may be qualified to seek the office. With the CE Form 1 being a required qualifying item for the town’s candidates, a candidate’s late filing of the CE Form 1 would not allow the candidate to be qualified as a candidate for the office being sought. Moreover, we further direct your attention to Florida’s Code of Ethics for Public Employees in Part III of chapter 112, Florida Statutes. Therein, section 112.317(1)(c), Florida Statutes (2017), provides that the penalty for a candidate who fails to comply with the filing of CE Form 1 as required by the Code of Ethics for Public Employees may include “Disqualification from being on the ballot.”

While the candidate may have relied in good faith upon your advice to postpone submitting the CE Form 1 until you sought clarification from the Town Attorney, it is ultimately the candidate’s responsibility to satisfy the requirements for qualifying. We are without authority to determine if the town is now estopped from preventing the candidate from being qualified. You should consult with your Town Attorney regarding this matter and the candidate may also desire to seek independent legal advice on the matter. However, we provide you with the following potentially relevant cases: (1) In *State ex. Rel. Taylor v. Gray*, 25 So. 2d 492 (Fla. 1946), the Secretary of State qualified a candidate after the qualifying period had ended when the candidate corrected an improper qualifying fee which was paid based upon erroneous advice from a Department of State filing clerk. The court held that the candidate could not correct the mistake – it was solely the candidate’s responsibility to know the correct filing fee and compliance with the qualifying statutes is a condition precedent to being a qualified candidate. (2) In *Battaglia v. Adams*, 164 So. 2d 195, 199 (Fla. 1964), the court stated: “This court has uniformly held that a candidate’s qualification papers must be completed and filed within the time prescribed by statute, and that any errors or omissions cannot be corrected after the filing deadline has passed.”

³ § 112.3145(2)(a), Fla. Stat. (2017). Also, this requirement is provided in rule: “A candidate for an elective state or local office specified in Section 112.3145, F.S., must file with the officer before whom he or she qualifies a statement of financial interests on the form prescribed by the Commission, CE Form 1 – Statement of Financial Interests, adopted by reference in subsection 34-8.202(1), F.A.C., together with and at the same time he or she files qualifying papers as a candidate.” Fla. Admin. Code R 34-8.202(6).

Ms. Dixie Gaultieri

January 23, 2018

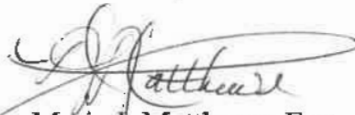
Page 4 of 4

SUMMARY

Pursuant to applicable law, candidates for elected municipal elective office must submit a CE Form 1, Statement of Financial Interests, at the time of qualifying for office. Also, if, by operation of section 100.3605(1), Florida Statutes, the submission of the CE Form 1 by a candidate becomes a qualifying item for municipal elective office, the filing officer must receive the form by the end of the qualifying period before the candidate may be qualified for the office being sought. If the candidate files the CE Form 1 after the end of the qualifying period, the law precludes the candidate from being qualified as a candidate for the office sought.

If the CE Form 1 is not a qualifying item for municipal candidates by virtue of the municipality altering provisions of Florida's Election Code by charter or ordinance concerning qualifying items that do not expressly apply to municipalities, Florida's Code of Ethics for Public Employees in Part III of chapter 112, Florida Statutes, requires a candidate for a local elective public to file the CE Form 1 at the same time the candidate files qualifying papers. It further establishes a potential penalty of disqualification from the ballot for failing to comply with the statutory ethical requirement.

Respectfully,

A handwritten signature in cursive script, appearing to read "Maria T. Matthews".

Maria T. Matthews, Esq.

Director, Division of Elections

cc: David M. Karpinia