



FLORIDA DEPARTMENT *of* STATE

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March 18, 2013

Mr. William J. "Bill" Montford
Chief Executive Officer
Florida Association of District School Superintendents
208 South Monroe Street
Tallahassee, Florida 32301

RE: DE 13-02 Campaign Finance; Disposition of Surplus Funds to Pay Election Assessment— payment of election assessment after remaining funds have been disposed of or transferred -- § 106.141, Florida Statutes

Dear Mr. Montford:

This letter responds to your attorney's request, on behalf of the Florida Association of District School Superintendents ("FADSS") and its members, for an advisory opinion regarding reimbursement of the election assessment required by section 106.141(6), Florida Statutes (2012). Because your organization and its members are engaged in political activity, the Division of Elections has the authority to issue you an opinion pursuant to section 106.23(2).

By way of background, your attorney indicated that several school superintendents qualified by the petition process and disposed of their surplus campaign funds pursuant to subsections (4) and (5) of section 106.141 within the 90-day period following their election. However, the superintendents did not first pay the election assessment reimbursement required by section 106.141(6). The superintendents no longer have funds in their respective campaign accounts with which to reimburse for the election assessment. Based upon these facts, your attorney essentially asks the following questions:

What are the permissible methods for a school superintendent to pay the election assessment after having disposed of all surplus campaign funds, and must an amended termination report be filed to reflect payment of the election assessment?

When a candidate qualifies by the petition method and fails to first make a reimbursement for the election assessment before disposing of surplus funds, the short answer is that two permissible methods exist to pay the election assessment: (1) Payment with personal funds; and (2) Payment with refund checks from disposed-of surplus funds, to include a refund check from the elected



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official's office account in which the official placed campaign funds. If the former candidate pays the election assessment reimbursement with personal funds, then an amended termination report is not necessary; however, if payment is made with refund checks, an amended termination report is necessary.

ANALYSIS

Section 106.141(1) requires "[e]ach candidate who withdraws his or her candidacy, becomes an unopposed candidate, or is eliminated as a candidate or elected to office [to], within 90 days, dispose of the funds on deposit in his or her campaign account" and file a termination report "reflecting the disposition of all remaining funds." Subsections (4) and (5) of section 106.141 permit disposition or transfer of surplus funds by one or more of the following means: returning the excess funds pro rata to each contributor, donating the funds to a charitable organization, giving the funds to an affiliated party committee or political party of which the candidate is a member, giving the funds to an applicable government's general revenue fund, or transferring an applicable amount into an office account. However, section 106.141(6) specifically provides that before any surplus funds can be disposed of under subsections (4) and (5), a candidate who qualified by the petition method and was not required to pay the election assessment must first reimburse the governmental entity for the waived assessment by remitting the funds to the qualifying officer. If insufficient funds remain in the campaign account to pay the full amount of the election assessment, the candidate must use whatever funds remain to pay the assessment.¹ The qualifying officer shall forward all reimbursements for the election assessment to the Department of State for deposit in the General Revenue Fund.²

To remedy the failure to reimburse for the election assessment, two permissible methods exist to pay the election assessment after the former candidate has disposed of all campaign funds and filed the campaign finance termination report.

First, the election assessment may be paid with personal funds. A candidate who withdraws his or her candidacy, becomes unopposed, or is eliminated or elected may not accept any contributions.³ In fact, section 106.141(9) imposes criminal liability for such acceptance of contributions. However, payment of the election assessment with personal funds is not a "contribution" or an "expenditure."⁴ By statutory definition, "contributions" and "expenditures" are only made "for the purpose of influencing the results of an election or making an electioneering communication."⁵ Because the election is over at the time a former candidate disposes of surplus funds, the purpose of paying the election assessment does not influence the results of an election and payment of the election assessment would not violate section 106.141(9). The reimbursement for the election assessment is a statutory obligation that does not constitute a contribution or expenditure. The former candidate is not required to submit an

¹ See *Division of Elections Opinion* 13-01 (Jan. 22, 2013) for an explanation of the requirement to make a reimbursement for the election assessment.

² § 106.141(6), Fla. Stat. (2012).

³ § 106.141(1), Fla. Stat. (2012).

⁴ See §§ 106.011(3) and (4), Fla. Stat. (2012).

⁵ §§ 106.011(3)(a) and (4)(a), Fla. Stat. (2012).

amended termination report. However, in an abundance of caution in case anyone should file a complaint with the Florida Elections Commission, the Division recommends that the former candidate provide the filing officer a memorandum for placement in the candidate’s file to show that the omission to pay the election assessment using campaign funds was not a willful one and that the assessment has, in fact, been paid.

Second, the election assessment may be paid with refund checks from disposed-of surplus funds. This situation could exist when the petition candidate failed to pay the election assessment prior to disposing of remaining campaign account funds, but where the now former candidate disposed of surplus funds pursuant to section 106.141(4) or transferred some funds into an office account pursuant to section 106.141(5). The Election Code recognizes that persons or entities may send refund checks to former candidates after the disposition of all surplus funds.⁶ The statutorily-mandated procedure is for the former candidate to endorse the checks and then distribute the refund under the provisions of section 106.141, which would include the payment of the election assessment.⁷ Former candidates who find themselves in this situation are not required to request refund checks, but if refund checks are received, then it is permissible for the former candidates to endorse the checks for payment toward the election assessment. If the former candidate received a refund check, then the former candidate must amend the termination report showing the refund and subsequent disposition.⁸

Your attorney expressly inquired whether the election assessment may be paid with funds that were transferred from the campaign account into an office account. While section 106.141(4) provides that office account funds “shall be used only for legitimate expenses in connection with the candidate’s public office,” the same statute as stated previously also permits refunds to occur after the disposition of all surplus funds. When a former candidate fails to first pay the reimbursement for the election assessment and faces the situation of making the reimbursement by personal funds or by endorsing refund checks, the Division opines that the former candidate may seek a refund of any transfer to his or her office account, just as the former candidate is permitted to seek a refund from a political party or charitable organization. In this situation, the former candidate is merely reducing the amount of campaign account funds transferred to the office account by the amount of the refund—an amount that should not have been transferred to the office account without first paying the election assessment reimbursement. A refund is not an expense. Therefore, a candidate may endorse a refund check from his or her office account in order to correct the wrong which occurred. The former candidate must amend the termination report showing the refund and subsequent disposition in this situation.⁹

⁶ § 106.141(1), Fla. Stat. (2012).

⁷ *Id.*

⁸ § 106.141(1), Fla. Stat. (2012).

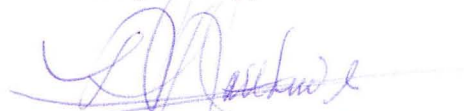
⁹ *Id.*

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SUMMARY

When a candidate qualifies by the petition method and fails to first make a reimbursement for the election assessment, two permissible methods exist to pay the election assessment: (1) Payment with personal funds; and (2) Payment with refund checks from disposed-of surplus funds, to include a refund check from the elected official's office account in which the official transferred the campaign funds. If the former candidate pays the election assessment reimbursement with personal funds, then an amended termination report is not necessary; however, if payment is made with refund checks, an amended termination report is necessary.

Respectfully,



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

cc: Ronald G. Meyer, Esq.