



## FLORIDA DEPARTMENT *of* STATE

**RICK SCOTT**  
Governor

**KEN DETZNER**  
Secretary of State

March 18, 2013

Ms. Cynthia S. Bonham  
City Clerk, City of Winter Park  
401 Park Avenue South  
Winter Park, FL 32789

RE: DE 13-04 Candidate Qualifying; Qualifying Fees;  
Election Assessment – check drawn upon campaign  
account -- §§ 100.3605, 99.093 and 99.061, Florida  
Statutes

Dear Clerk Bonham:

This letter responds to a request for an advisory opinion submitted by the City Attorney on your behalf. You are the City Clerk for the City of Winter Park and serve as the filing officer for municipal candidates submitting qualification paperwork for the Winter Park municipal elections; therefore, the Division has the authority to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2012).

Your attorney states that you recently instructed a candidate for City Commission that the election assessment must be paid with a check drawn upon the candidate's campaign account. Your attorney essentially posed the following question:

Must municipal candidates pay the election assessment required in section 99.093, Florida Statutes (2012), with a check drawn upon that candidate's campaign account in order for the City Clerk to qualify the candidate?

The short answer is "Yes" to the extent that an applicable special act, charter, or ordinance provision affecting the municipality does not provide otherwise.

### ANALYSIS

Section 100.3605(1), Florida Statutes (2012), 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." Your attorney states that no applicable special act, charter, or ordinance provision exists for Winter Park. If this is correct, the candidate qualifying



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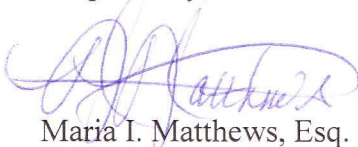


requirements in section 99.061 governs your municipal candidate qualifying.<sup>1</sup> Unless the municipal candidate files an oath of undue burden regarding the payment of the election assessment, the Election Code requires each candidate to pay at the time of qualifying a municipal election assessment equal to 1% of the annual salary of the office sought.<sup>2</sup> The election assessment is part of the qualifying fee that each candidate must pay at the time of filing his or her qualifying papers.<sup>3</sup> In order to qualify as a candidate, the Election Code expressly mandates that the candidate must pay the qualifying fee with a “check drawn upon the candidate’s campaign account.”<sup>4</sup> Therefore, in the absence of a special act, charter or ordinance provision providing otherwise, a municipal candidate, in order to qualify for the office sought, must pay the election assessment required by section 99.093 with a check drawn upon the candidate’s campaign account. If the candidate fails to pay with a check drawn upon the candidate’s campaign account, then the filing officer should not qualify the candidate.<sup>5</sup>

#### SUMMARY

In the absence of an applicable special act, charter, or ordinance provision providing otherwise, a municipal candidate, in order to qualify, must pay the election assessment required by section 99.093, Florida Statutes (2012), with a check drawn upon the candidate’s campaign account.

Respectfully,



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

cc: Usher L. Brown, Esq., City Attorney, City of Winter Park

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<sup>1</sup> This opinion is necessarily limited to the application of the Florida Election Code and does not analyze applicable special acts or provisions of local law that may apply or opine as to the application of any such laws to your situation. The Division has no authority to interpret those provisions. Therefore, this opinion applies only to the extent a special act or local law does not provide otherwise.

<sup>2</sup> § 99.093, Fla. Stat. (2012).

<sup>3</sup> § 99.092, Fla. Stat. (2012).

<sup>4</sup> § 99.061(7)(a)1., Fla. Stat. (2012).

<sup>5</sup> See *Weeks v. Detzner*, No. 2012-CA-1858, at 5 (Fla. 2nd Jud. Cir. Aug. 7, 2012) (order granting summary judgment)(upholding the Secretary of State’s determination that a candidate did not qualify because he did not submit a properly executed check drawn upon the candidate’s campaign account). It is worth noting that a filing officer’s function is ministerial and as such, the officer lacks authority to determine the truth or accuracy of the contents of qualifying papers. See *id.*; § 99.061(7)(c), Fla. Stat.; see also e.g., *State ex rel. Shevin v. Stone*, 279 So. 2d 17 (Fla. 1973); *Division of Elections Opinion* 78-30 (Aug. 3, 1978); see also e.g., *Division of Elections Opinion* 09-05 (Jul. 15, 2009) (analyzing qualifying officer’s duty and collecting cases and opinions).