



FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

January 2, 2018

Ms. Deborah M. Andrea
City Clerk, City of Lake Worth
7 North Dixie Highway
Lake Worth, Florida 33460

Re: DE 18-01 Ballots – Proper Order of
Placement of Candidate Names on Municipal
Ballot – § 105.041(2), Florida Statutes

Dear Ms. Andrea:

This letter responds to your request for an advisory opinion regarding the proper placement of candidate names on the ballot. You are the City Clerk and function as the Supervisor of Elections for the City of Lake Worth. 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 reflects that two candidates qualified for Lake Worth City Commissioner, District 1. On the city's Oath of Candidate forms, one candidate indicated his name was to be printed on the ballot as "Scott Maxwell;" the other candidate desired her name to be printed on the ballot as "Sarah Parr Malega." Your question concerns the order of alphabetical placement of these names on the ballot. The documentation that you provided with your request reflects that the female candidate listed her "First, Middle, and Last" names on the Form DS-DE 9 (Appointment of Campaign Treasurer and Designation of Campaign Depository) as "Sarah Coleen Malega;" plus, the signature on the form appears to be "Sarah Malega." This is also the signature that appears on her Oath of Candidate form. Your question is whether the female candidate's last name should be alphabetized under "Parr Malega" or "Malega."

ANALYSIS

Section 100.3605, Florida Statutes (2017), provides:

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



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.

Your request for an opinion indicates: "The City of Lake Worth's code says the ballot is set in accordance with state statutes (*i.e., alphabetical order*)." Assuming what you state about the city's code is correct, section 105.041(2), Florida Statutes (2017), provides: "The names of candidates for election to each nonpartisan office shall be listed in alphabetical order." The Division has interpreted the order of placement to be alphabetically by *last* name (*see* Fla. Admin. Code Rule 1S-2.032, *Uniform Design for Election Ballots*, and the Rule's incorporated ballot examples for nonpartisan races, to include municipal races).

As a qualifying officer performing a ministerial function in reviewing qualifying papers, you have only the qualifying papers to determine the last name of a candidate. § 99.061(7)(c), Fla. Stat. (2017). In your situation, you have nothing contrary to show that the candidate's last name is anything other than "Malega." Without the candidate providing clarification in her qualifying papers as to her actual last name before the end of the qualifying period, we are of the opinion that the candidate's surname (last name) is "Malega," the last name she listed on the Oath of Candidate form, which is consistent with what she indicated on the other qualifying paper (the Form DS-DE 9) you received from her, the DS-DE 9, and her signatures on both forms.¹ Therefore, it is reasonable to conclude that the ballot order should be "Sarah Parr Malega" appearing before "Scott Maxwell" on your ballot. We also remind you that the "candidate's name as it is to appear on the ballot may not be changed after the end of qualifying." § 99.061(7)(b), Fla. Stat. (2017).

SUMMARY

In nonpartisan races governed by chapter 105, Florida Statutes (2017), the ballot placement order of candidate names in a race is to be alphabetical by last name. Without a candidate providing clarification as to his or her actual last name before the end of qualifying on the qualifying papers submitted to the qualifying office, a qualifying officer may reasonably conclude that the candidate's surname (last name) is the last one listed on the Oath of Candidate form wherein the candidate prints the name as he or she wishes it to appear on the ballot.

Respectfully,



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

¹ Effective January 2, 2018, the candidate oath forms incorporated by reference into Rule 1S-2.0001, Fla. Admin. Code, require candidates to indicate if the name to be printed on the ballot is an unhyphenated compound last name.