



**FYI**

**FLORIDA DEPARTMENT of STATE**

**RICK SCOTT**  
Governor

**KEN DETZNER**  
Secretary of State

May 9, 2018

The Honorable Steven B. Grant  
Mayor, Boynton Beach  
136 N.E. 3<sup>rd</sup> Avenue  
Boynton Beach, Florida 33435

Re: DE 18-06 Campaign Financing;  
Expenditures; Use of Campaign Funds for  
Foreign County Travel to Familiarize  
Candidate with Immigrant Electorate's  
Culture – §§ 106.011(10), 106.021(1)(b) and  
106.11(1)(a), Florida Statutes

Dear Mayor Grant:

This letter responds to your request for an advisory opinion regarding the permissible use of your campaign funds. As a candidate who proposes to make expenditures from your campaign depository, the Division of Elections is authorized to issue an opinion to you pursuant to section 106.23(2), Florida Statutes (2017).

FACTS

You currently are the Mayor of Boynton Beach, Florida, and are seeking re-election in the city's 2019 election. You inquire if you may expend campaign funds from your campaign depository to travel to Haiti to gain a better understanding of the Haitian-American voting demographic in your city. You provided a news article detailing the growing political influence of the Haitian community in your geographical area of Florida. You also identify three elected Haiti-Americans in Boynton Beach: a city commissioner, a county commissioner, and a state representative. You believe that travel to learn about the Haitian culture, education, and economics will provide you a greater understanding of the growing Haitian-American demographic in your city and help influence the results of your re-election. You inquire about making expenditures from your campaign account in the following scenarios: (1) To travel, subject to the City's Commission's approval, on official city business as the Mayor to visit Les Cayes, Haiti, which is Boynton Beach's sister city; and (2) To travel to Haiti as a candidate for re-election, without needing to obtain the City Commission's approval.

**Division of Elections**  
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### ANALYSIS

Pertinent to your inquiry, section 106.021(1)(b), Florida Statutes (2017), provides a candidate must “designate one primary campaign depository for the purpose of depositing all contributions received, and *disbursing all expenditures made, by the candidate.*” [Emphasis added.] Also, section 106.11(1)(a) provides that the campaign account “shall be used only for the purpose of depositing contributions and making expenditures for the candidate.” Thus, you may only spend funds from your campaign depository that satisfy the definition of an “expenditure.” Section 106.011(10)(a), in relevant part, defines “expenditure” as “*a purchase, payment, ... or anything of value made for the purpose of influencing the results of an election or making an electioneering communication.*” [Emphasis added.]

The Legislature has given the Division of Elections the authority to render advisory opinions with respect to Florida election laws.<sup>1</sup> When an agency is given the authority to interpret statutes, it is afforded wide discretion in the interpretation of a statute that it has power and duty to administer.<sup>2</sup> It stands to reason that a candidate may benefit from a better understanding of his or her voting constituency’s ethnic culture, education, and economics. However, it is the Division’s opinion that travel to a foreign country to achieve that understanding is not a reasonable and allowable expenditure as defined under Florida law.

It is tenuous to classify a campaign-funded trip to Haiti as “influencing the results of an election” in Boynton Beach where your voting electorate actually reside in your city, not in Haiti. It is your voting electorate in Boynton Beach, not the residents of Haiti who can vote for you and contribute to your campaign. Only U.S. citizens who are legal residents of the state and county are allowed to vote in Florida.<sup>3</sup> Moreover, foreign nationals are prohibited by federal law from directly or indirectly donating funds to any United States’ federal, state, or local candidate’s election campaign, and for the candidate to receive such donations.<sup>4</sup>

It is the Division’s position that a contrary interpretation of permissible “expenditures” for travel to any foreign country in which an American voting electorate may originate would be a “slippery slope” to potential misuse. At this juncture, the Division of Elections opines that in

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<sup>1</sup> § 106.23(2), Fla. Stat. (2017). The section further provides that an advisory opinion is binding upon the person who sought the opinion until the opinion is revoked or amended. Moreover, the Florida Elections Commission must adhere to the Divisions of Elections’ advisory opinions in its deliberations and decisions. See § 106.26(13), Fla. Stat. (2017).

<sup>2</sup> *Cagle v. St. Johns County School Dist.*, 939 So. 2d. 1085 (Fla. 5th DCA 2006). (If an agency’s interpretation of a statute which it has authority to administer is within the range of possible and reasonable interpretations, the agency’s interpretation will withstand judicial scrutiny.) Also, a court lacks jurisdiction to review a Division of Elections’ advisory opinion issued pursuant to s. 106.23(2), Fla. Stat. *Sullivan v. Division of Elections, Dept. of State*, 413 So. 2d 109 (Fla. 1st DCA 1982).

<sup>3</sup> § 97.041(1)(a), Fla. Stat. (2017).

<sup>4</sup> 52 U.S.C. § 30121.

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neither of the scenarios that you mention (official business trip as Mayor or a trip as a candidate) may you make expenditures from your campaign depository to travel to a foreign country to learn about the culture, education, and economics of an immigrant voting population that resides within the geographical area in the United States represented by the office you seek.

SUMMARY

A candidate may not make expenditures as defined under chapter 106, Florida Statutes, from the candidate's campaign depository to travel to a foreign country to learn about the culture, education, and economics of an immigrant voting population that resides within the geographical area in the United States represented by the office being sought.

Respectfully,

A handwritten signature in black ink, appearing to read 'Maria F. Matthews', written over a horizontal line.

Maria F. Matthews, Esq.

Director, Division of Elections