

sufficiently in advance of meetings to give reasonable notice to those who may wish to attend.

Discussion of all matters involving public business on which foreseeable commission action may be taken, and all votes by the commissioners, should be at public meetings open to the news media and the public at all times.

Vote sheets, final orders, and all other documents and materials "made or received pursuant to law or ordinance or in connection with the transaction of official business" should be open for inspection by members of the news media and the public generally at all reasonable times.

073-345—September 17, 1973

ELECTIONS

CAMPAIGN EXPENDITURES IN MUNICIPAL ELECTIONS

To: Richard (Dick) Stone, Secretary of State, Tallahassee

Prepared by: Bjarne B. Andersen, Jr., Assistant Attorney General

QUESTION:

What limits are placed by §10, Ch. 73-128, Laws of Florida [§106.10, F. S.], on the campaign expenditures which a nonpartisan candidate for a municipal office may spend in the first election, and if a runoff is necessary, how much may be spent for that election?

SUMMARY:

Under Section 10(5), Chapter 73-128, Laws of Florida, read *in pari materia* with the several and diverse municipal charters, special acts, and municipal ordinances providing for the nonpartisan nomination for, and election to, municipal office, candidates for nonpartisan nomination or election to such offices are authorized total campaign expenditures as follows:

When a single nonpartisan election to office is prescribed, twenty-five thousand dollars.

When a single nonpartisan nominating, eliminating, or primary election is provided followed by the city's regular or general election, fifteen thousand dollars for the nominating or primary election and twenty-five thousand dollars for the regular or general election.

If a second nominating or primary election is provided, then fifteen thousand dollars in campaign expenditures for this second nonpartisan primary election is authorized.

If the city's organic election laws provide that a municipality's nonpartisan regular or general election may be followed by a subsequent special or run-off election in the event that no candidate receives a majority of the total votes cast in such election, a candidate shall be limited to fifteen thousand dollars for the first such election and twenty-five thousand dollars for the second or run-off election at which election he will be assured of his election to office.

If the organic election laws of a city provide for a third election, then, in that event, candidates in the first nonpartisan election shall be limited to fifteen thousand dollars; for the second election or run-off election, fifteen thousand dollars; and for the third or special run-off election, as provided by such municipal election laws, twenty-five thousand dollars.

Section 10, Ch. 73-128, Laws of Florida [§106.10(1)(e), F. S.], provides in part:

No candidate for nomination or election to . . . any municipal office . . . shall expend any funds or incur any obligation or expenditure of funds on behalf of his nomination or election in excess of . . . fifteen thousand dollars (\$15,000) in the first primary, fifteen thousand dollars (\$15,000) for the second primary, and twenty-five thousand dollars (\$25,000) for the general election.

Section 10, *supra* [§106.10(1)(e), F. S.], does not refer to nonpartisan municipal elections but is addressed only to first and second primaries and general elections. It does not define in any manner primary or general elections in the control of, or in relation to, municipal elections in general or nonpartisan municipal elections in particular.

Section 1(5) of Ch. 73-128, *supra* [§106.011(5) F. S.], defines the term "election" to mean:

. . . any primary election, special primary election, special general election, or *municipal election held in this state for the purpose of nominating or electing candidates to public office* . . . (Emphasis supplied.)

As far as Ch. 73-128, *supra*, is concerned, it would appear that primary elections, general elections, and municipal elections are separate and distinct procedures for electing a person to a particular public office.

As defined by the Florida Election Code, §97.021(1), F. S., a "primary election" is:

. . . [an] election held preceding the general election for the purpose of nominating a party nominee to be voted for in the general election to fill a national, state or county office.

A "general election" is defined to be one held "for the purpose of filling national, state, and county offices" by §97.021(3), F. S.

Neither term, as defined in §97.021(1) or (3), F. S., refers to or applies to a municipal election, whether it be partisan or nonpartisan.

Section 10(5), *supra*, in placing limitations on campaign expenditures by candidates for other public offices not otherwise specified in various subsections of said §10, and for municipal offices, does not refer to first and second nonpartisan elections as does §10(7), Laws of Florida [§106.10(1)(g), F. S.], relating to campaign expenditures by a candidate for judicial office.

In applying §10(5), *supra*, to the several municipalities of this state, we are confronted with the fact that the manner or method of selecting or electing municipal officers varies from municipality to municipality. Accordingly, unless the manner or method of electing a municipal officer is controlled or regulated by a particular statute, the procedure to be followed by a city in the selection of its officers is a matter of municipal concern unless in conflict with the Constitution and general laws of the state. *See* Art. VIII, §2(a) and (b), State Const.; §§165.13 and 166.01, F. S.; 3 McQuillin, *Municipal Corporations*, §12.01; *cf. In re* Advisory Opinion to the Governor, 116 So.2d 425 (Fla. 1959); *State v. Dyer*, 148 So. 201 (Fla. 1933); *State v. Johnson*, 135 So. 816 (Fla. 1931).

It must be noted that Ch. 73-128, *supra*, in no way treats, modifies, amends, or refers to the manner of selecting or electing municipal officers, and §10(5) thereof only controls or regulates the amount of campaign expenditures a candidate for municipal office may spend in regard to his nomination or election to such office.

Since a general act may operate to repeal repugnant local or special acts only when the legislative intent to repeal is made plain by the terms and purposes of the general act, §10(5), *supra*, must be construed and applied *in pari materia* with all other laws regarding the nomination and election of municipal officers. Thus, considering the diversified language of various municipal charters, ordinances,

and special acts dealing with the nomination of municipal officers by means of a nominating, elimination, or "primary" election and to the "election" of such officers at a "regular" or "general" municipal election, the local law regulating the procedures for an election and the general law regulating the campaign expenditures for such elections should be read together. *Cf. American Bakeries Co. v. Haines City*, 180 So. 524 (Fla. 1938); *Seminole Rock Products, Inc. v. Town of Medley*, 180 So.2d 457 (Fla. 1965); *State v. Hillsborough County*, 183 So. 157 (Fla. 1938).

We are, therefore, in considering the diversity of local provisions, considering the application of §10(5), *supra*, to situations involving either: the selection of a candidate *for an office*; or the election of a candidate *to an office*; and accordingly the type of elections provided by the organic laws of a particular city will control.

Therefore, based upon the above-cited authorities, I am of the opinion that the provisions of §10(5) should be applied as follows:

Assuming a municipal charter or ordinance provides for a single nonpartisan election, since the results of that single election will place a candidate in office, it is a general election and candidates in such an election are authorized to a total campaign expenditure of twenty-five thousand dollars.

If a city charter, special act, or ordinance, provides for a nominating, eliminating, or "primary" election, preceding the city's regular or "general" nonpartisan election, then in that event a candidate for municipal office is allowed campaign expenditures of fifteen thousand dollars for the nonpartisan nominating, eliminating, or primary election, and twenty-five thousand dollars for the city's nonpartisan regular or general election.

If a city charter, etc., provides more than one such nominating election, then in that event the limitation placed on campaign expenditures for such an election will be as that authorized for a second primary, to wit, fifteen thousand dollars.

If a city charter provides that the city's regular or general nonpartisan election may be either a nominating or general election, and if no one candidate receives a majority of the total votes cast, the two candidates receiving the highest and next highest number of votes cast shall be placed on a ballot in a subsequent, special, or run-off election from which election a candidate will be elected to office. The candidates under such circumstances shall be authorized to a total campaign expenditure of fifteen thousand dollars in the first nonpartisan city election and twenty-five thousand dollars for the second or run-off nonpartisan election.

In a situation where a city's charter, etc., provides that the city's regular or general nonpartisan municipal election may be followed by a second and third election, then in that event candidates for such offices shall be authorized campaign expenditures of fifteen thousand dollars for the first such election, fifteen thousand dollars for the second election and twenty-five thousand dollars for the third such nonpartisan municipal election.

073-346—September 17, 1973

TAXATION

MILLAGE ALLOWABLE BY SPECIAL DISTRICT—INCREASE OR DECREASE

To: Betty Easley, Representative, 56th District, Clearwater

Prepared by: Sydney H. McKenzie III, Assistant Attorney General

QUESTIONS:

1. Is the Central Pinellas Transit Authority excluded from the reduction of millage as set forth in §1 of Ch. 73-593, Laws of Florida?
2. For the year 1973, may the Central Pinellas Transit Authority