Legal Fees for Election Contest

Number: INFORMAL

Date: August 14, 2008

Mr. Luis R. Figueredo
Attorney for the City of South Miami
18001 Old Cutler Road, Suite 556
Miami, Florida 33157

Dear Mr. Figueredo:

You have asked whether the City of South Miami may pay the legal fees of an elected city commissioner who was named as an indispensable party pursuant to section 102.168(4), Florida Statutes, in a suit contesting the election.

Section 102.168 (1), Florida Statutes, states that the certification of any election, the nomination of any person to office, or the result of any question submitted by referendum may be contested in the circuit court by any unsuccessful candidate for the office or by any elector qualified to vote in the election related to the candidacy, or by any taxpayer. The successful candidate is an indispensable party to any action contesting the election or nomination of a candidate.[1]

In Attorney General Opinion 2001-53, this office was asked whether county funds could be used to pay the legal fees of a successful political candidate who was an indispensable party to a suit contesting the results of an election, when the canvassing board had been charged with failure to carry out its statutory duties. Citing to a previous opinion of this office, Attorney General Opinion 77-87, and several cases[2] addressing the expenditure of public funds for the defense of an officer, it was concluded that funds may not be used to pay for the defense of a successful candidate in an election contest suit, regardless of whether the charges arise from alleged improprieties by the county canvassing board or by the successful candidate.

There have been no subsequent amendments to section 102.168, Florida Statutes, or judicial determinations that would alter the conclusions reached in Attorney General 2001-53. Accordingly, it would appear that the City of South Miami may not expend public funds for the defense of the successful candidate for the city commission who is an indispensable party to a suit contesting the results of the election.

I trust that these informal comments will be of assistance to you in resolving this matter.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] Section 102.168(4), Fla. Stat.

[2] *See Markham v. State, Department of Revenue*, 298 So. 2d 210 (Fla. 1st DCA 1974); *Thornber v. City of Fort Walton Beach*, 568 So. 2d 914 (Fla. 1990); *Lomelo v. City of Sunrise*, 423 So. 2d 974, 976 (Fla. 4th DCA 1982) (public funds may not be expended for other than public purposes; public officers are entitled to a defense at the expense of the public in a law suit arising from the performance of the officer's official duties and while serving a public purpose); *Nuzum v. Valdes*, 407 So. 2d 277, 279 (Fla. 3rd DCA 1981) (when a public officer is charged with misconduct while performing his official duties and while serving a public purpose, public has a primary interest in the controversy and should pay the reasonable and necessary legal fees incurred by the public officer in successfully defending against unfounded allegations of official misconduct); *Maloy v. Board of County Commissioners of Leon County*, 946 So. 2d 1260 (Fla. 1st DCA 2007).