

**PATTON BOGGS LLP**  
ATTORNEYS AT LAW

2550 M Street, NW  
Washington, DC 20037-1350  
202-457-6000

Facsimile 202-457-6315  
www.pattonboggs.com

June 20, 2000

Benjamin L. Ginsberg  
202-457-6405  
bginsberg@pattonboggs.com

The Honorable Darryl Wold  
Chairman  
Federal Election Commission  
999 E Street, NW  
Washington, D.C. 20463

**AOR 2000-19**

**JUN 21 2 50 PM '00**

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

Re: Request for Advisory Opinion

Dear Chairman Wold:

On behalf of the Republican Party of Florida, this letter seeks an Advisory Opinion pursuant to 2 U.S.C. § 437f concerning the method of allocating administrative expenses for the 1999-2000 election cycle. This advisory request is necessitated by the announcement of Senator Connie Mack that he would not seek reelection and the subsequent decision by two state Cabinet officials that they would seek election to the U.S. Senate. Since Florida has a "resign to run" law governing persons attempting to seek any other elected office, the Commission needs to answer the effective date after which a state party may adjust its federal/state ballot composition ratio used in allocating the party's administrative and generic voter drive expenses.

Once the Commission determines the date on which a state party may begin to include such new and unexpected elections in its ballot composition calculation, the party seeks permission to retroactively adjust its Schedule H1 ratio to comply with this agency's determination so that the party's allocation of administrative expenses will properly reflect the reality of the state party's relative expenditures at the first available date.<sup>1</sup>

**Factual Background:** Pursuant to the applicable FEC regulations, the Republican Party of Florida calculated its ballot composition using schedule H1 on January 1, 1999. At that time, the ratio was 3 federal points and 4 nonfederal points, resulting in a ratio of 43/57. Three months later, on March 5, 1999, Senator Mack publicly announced that he would not seek re-election at the end of his term. Several state office holders immediately announced

<sup>1</sup> As a practical matter, the Commission's answer will also apply to the Florida Democratic Party.

The Honorable Darryl Wold  
June 20, 2000  
Page 2

interest in seeking his seat. Under the state's stringent "resign to run" law, each of these officeholders was required to submit his resignation in order to run. On March 22, 1999, State Insurance Commissioner Bill Nelson filed a Statement of Candidacy for the U.S. Senate seat. In April 1999, Education Commissioner Tom Gallagher established the structure to begin accepting contributions to run for the Senate seat as well. On May 13 & 14, 1999, the first state candidates registered with the State Division of Elections to begin campaigning for the now-to-be open offices of State Insurance Commissioner and State Education Commissioner, respectively.

As early as May 1999, correspondence from the State Division of Elections acknowledged that these races were "real." However, under law the State Governor could not officially declare these elections until federal ballot qualification week, which did not commence until noon May 8, 2000 – almost one entire year after Senator Mack's announcement. Because the elections had not been "officially" declared, the Republican Party of Florida continued to use the same ballot composition ratio that it computed on January 1, 1999, which did not include the two additional state points that would have been reflected by the inclusion of these two new elections on the ballot. The Governor officially declared the two state elections during the week of May 8, 2000, at which point the Republican Party of Florida began using a new ballot composition ration of 33/67, reflecting the two additional state races whose existence was pre-determined in March and April of 1999.

Political parties should adjust their composition ratios to reflect special elections that unexpectedly arise in the course of an election cycle. See Advisory Opinion 1991-25. While the end of this period of adjustment has been settled as a fixed dated – that on which the special election occurs – the starting date on which the adjustment may be made has not been made clear. See id. An argument could be made that the adjustment date should be the date on which the election is officially declared by the State Governor, and this is the procedure which the party followed in this case. However, the facts of this situation reveal a glaring weakness in such a procedure. Because of the rules governing the official announcements of elections by the executive branch, an entire year passed between the date on which the two elections became predestined to occur in this election cycle and the date on which the Governor was permitted to "officially" announce the elections.

In every "real" sense, the two elections began in mid-May 1999. The candidates for the offices began campaign activities in mid-May and filed their initial disclosure reports with the Florida Elections Commission in mid-May. They announced their candidacies, formed committees, collected contributions, attended rallies and met with potential voters, and otherwise campaigned in every meaningful way during the period between May 1999 and

The Honorable Darryl Wold  
June 20, 2000  
Page 3

May 2000. An interpretation of the rules that uses the "official" announcement of the election as the start date for an adjustment thus fails to reflect the reality that these elections in fact began a year earlier. More importantly, the Florida State Republican Party has been supporting the candidates for these offices since May 1999, just as it has the candidates for regularly-scheduled elections. An interpretation relying on the "official" announcement of the election to compute the ballot composition ratio thus fails to reflect accurately the amount of the parties' administration and generic expenses that were in fact devoted to state elections by the state parties. This inaccuracy flies in the face of the purpose underlying the use of the ballot composition ratio to allocate administrative expenses: to reflect the proportion of federal versus nonfederal activity conducted by the party. Where, as here, the period of inaccuracy in the ratio for the current election cycle is almost as long as the period in which the ratio will be accurate, the inaccuracy is particularly glaring and in need of correction.

An interpretation of the rules that would allow the party to begin adjusting expenses from the time at which the state office holders announced their intent to run and filed their statements of candidacy and other requisite papers with the State Board of Elections would seem to best comport with the Commission's decision in Advisory Opinion 1991-25. In that situation, a U.S. Senator died unexpectedly during an election cycle in which his seat would not have otherwise been up for election. In determining when the state parties could begin counting his seat as one point in their ballot composition ratios, the Commission stated that "[t]he vacancy for U.S. Senate in Pennsylvania, however, did not exist until April 4, 1991 [the day on which Senator Heinz died]." The Commission then allowed the parties to retroactively adjust their ratios starting at that time.<sup>2</sup> The Commission undoubtedly used the day on which Senator Heinz died as a start date because it was the date on which politically prudent parties were compelled to begin allocating their fixed resources towards an election effort. So to here, the date on which the state officers announced their candidacy and filed their papers with the Commission should be used as a start date for the adjustment period. It was at this time that the state parties were compelled to give consideration to the elections and begin devoting their fixed resources to the campaigns.

If the Commission agrees that the time parties should begin to adjust their ballot composition ratios is a date earlier than the date on which the election is officially announced, the party requests 30 days from the date of the issuance of the Commission's opinion to file an amended schedule H1 for the current election cycle. There is ample precedent to support

---

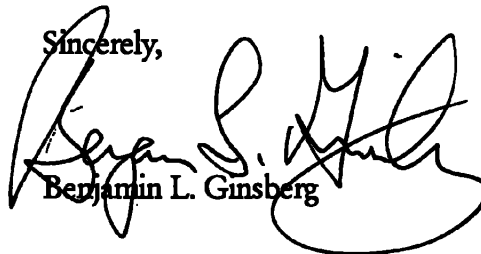
<sup>2</sup> For purposes of accounting, the actual date used by the Commission was May 1, for the sake of "administrative convenience." Though the candidates announced their intention to run, filed qualifying papers, and began collecting contributions in Mid-May 1999, using June 1, 1999 as a starting date for purposes of administrative convenience seems a sensible solution.

The Honorable Darryl Wold  
June 20, 2000  
Page 4

such relief where a party has attempted in good faith to comply with the rules. See, e.g., Advisory Opinion 1991-6 (permitting party retroactive readjustment of expenses in light of difficulty in implementing new rules); Advisory Opinion 1991-15 (granting a party committee that had incorrectly computed its ballot composition ratio permission to make a corrective transfer within thirty days of the issuance of that opinion); 1993-3 (granting political committee permission to retroactively reallocate fundraising expenses that had been misallocated due to deficient accounting procedures, despite fact that "brief period of adjustment" granted by commission following rule changes had ended). Indeed, this situation is virtually identical to the one confronting the Commission in Advisory Opinion 1991-25. Therein, the commission addressed for the first time the issue of whether and when parties should adjust their ballot composition ratios in light of a special election for federal office caused by the unexpected death of a Senator. Because the parties had attempted in good faith to comply with the rules, the Commission allowed the parties thirty days from the issuance of the opinion to make adjustments in light of the Commission's clarification. In the instant case, the party has also attempted to comply in good faith with the Commission's rules. When the Commission addresses for the first time the issue of when parties should adjust their ballot composition ratios in light of a special election for state office caused by the existence of a "resign to run" statute, allowing retroactive adjustment of the ballot composition ratio with the benefit of the Commission's clarification seems a fair and equitable solution.

Thank you for your attention in this matter, and for the opportunity to submit these concerns.

Sincerely,



Benjamin L. Ginsberg

BLG/jmt