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April 15, 2010

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STAFF GENERAL COUNSEL

Christina White
Director of Governmental Affairs
Department of Elections
2700 N.W. 87th Avenue
Doral, Fl 33172

RE: REQUEST FOR ADVISORY OPINION-RQO 10-10

Dear Ms. White:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on April 14, 2010 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding when the 90 day period to seek public financing begins under the county ordinance.

In your request, you advised the Commission that Josephat Celestine is running for the District 2 seat on the Board of County Commissioners. On December 9, 2009, Celestine filed the required paperwork with the Department of Elections. One of the required forms is DE-9 which provides for the appointment of a campaign treasurer and the designation of a campaign depository. Celestine signed the form both as the candidate and for Sylvio Destinal, the campaign treasurer. §106.21(c), F.S. (2009) requires the campaign treasurer to sign the report accepting the designation as treasurer. The candidate may not be qualified for election without the correct form. A form may be corrected up to the last day of qualifying.

On December 17, 2009, the Elections Department notified Celestine that he had qualified for election and that the last day to qualify for public financing was March 9, 2010. Subsequently, the Elections Department notified Celestine that his depository form was incorrect and that a corrected form had to be provided. On January 10, 2010, Celestine filed a revised form. The form correctly contained the signature of the treasurer. Celestine also filed a form waiving any campaign report for the period between October 1 and December 31st, 2009. Celestine indicated that he had not opened a bank account or made any expenditures during the last quarter of 2009.

On March 10, 2010, Celestine sought public financing. Under the ordinance, a candidate must request public financing within ninety days of "opening a campaign account."

The Ethics Commission found the ninety day period commences with the filing of the designation form. Section 12-22(c) provides that "Each candidate for the Office of Mayor or the Board of County Commissioners of Miami-Dade County who desires to receive contributions from the Election Campaign Financing Trust Fund (the fund) shall file an irrevocable declaration of intent to seek public financing no later than 90 days after opening a campaign account or thirty days before the first day of qualifying whichever comes first."

The Department of Elections has used the designation form to compute the 90 day period to file the declaration of intent. Most candidates open a campaign account within a day or two of designating a depository. In order to determine a candidate's eligibility for public financing, the Department of Elections may use the date on the designation form for determining the 90 day period for filing the intent to seek public financing.

In the instant case, since Celestine did not file the correct designation form until January 10, 2010 and did not open a campaign account prior to the filing of the corrected form, the time period began to run from the date of the corrected form. Therefore, Celestine is eligible to apply for public financing.

Accordingly, the date for calculating "the opening of the campaign account" is the date of submission of the depository form. Celestine may qualify because the correct form was not filed until January 10, 2010.

If you have any questions regarding this opinion, please call the undersigned at (305) 579-2954 or Ardyth Walker, Staff General Counsel at (305) 350-0616.

Sincerely Yours,

A handwritten signature in black ink, appearing to read "Robert Meyers", with a long horizontal line extending to the right.

ROBERT MEYERS
Executive Director