Memorandum

MIAMI-DADE COUNTY

Date: April 5, 2013

To: Honorable Chairwoman Rebeca Sosa and Members
Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Opinion Regarding Payment of the Costs of a Non-Bond Referendum Election by a Private Party

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Attached, for your information, is the opinion from Maria I. Mathews, Director of the Division of Elections from the Florida Department of State regarding the payment of the costs of a non-bond referendum election by a private party. In short, the summary of the opinion states:

> "Miami-Dade County may require a private party to pay the cost of conducting a non-bond referendum election to approve the use of tourist development tax dollars to fund the modernization of a sports stadium as a condition of holding the referendum election."

If you have any questions, please contact Supervisor of Elections Penny Townsley at 305-499-8509.

Attachment

c: R. A. Cuevas, Jr., County Attorney
Office of the Mayor Senior Staff
Department Directors

FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

April 4, 2013

Honorable Carlos A. Gimenez
Mayor, Miami-Dade County
Stephen P. Clark Center
111 N.W. First Street, 29th Floor
Miami, Florida 33128-1930

RE: DE 13-06 Referendum – Private financing of county referendum -- §§ 100.011(3), 100.201, and 100.241, Florida Statutes

Dear Mayor Gimenez:

This letter responds to your request for an advisory opinion regarding the payment of the costs of a non-bond referendum election by a private party. Because you have election-related duties as Mayor of Miami-Dade County pursuant to the Miami-Dade County Home Rule Charter, the Division of Elections has the authority to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2012).

You ask essentially the following question:

> May Miami-Dade County require a private party to pay the cost of a non-bond referendum election to approve the use of tourist development tax dollars to fund the modernization of a sports stadium as a condition of holding the referendum election?

In sum, the answer to your question is yes. Florida law does not prohibit the private financing of a public election in the manner that you describe.

According to your request for this opinion, Miami-Dade County intends to call a referendum election on the use of tourist development tax dollars to fund, in part, the cost of modernizing the Sun Life Stadium on behalf of "the Miami Dolphins organization." Additionally, the county intends to condition the holding of the non-bond referendum election upon the Miami Dolphins organization paying in advance of the election a predetermined amount to cover the cost of the election. The county also does not intend to reimburse, refund or otherwise repay any part of those prepaid costs, regardless of the outcome of the election.

In *Division of Elections Opinion* 83-11 (May 24, 1983), the Division opined that all public elections must be financed by public funds. Finding an absence of any "authority or precedent in Florida to permit elections to be directly financed . . . by private sources," the Division concluded that the Legislature did "not intend for public elections to be directly financed . . . by private sources." However, in light of subsequent Florida law allowing public elections to be financed by private sources, *Opinion* 83-11 is not applicable to your question. In 1992, the Legislature enacted section 550.054(4), Florida Statutes, which requires that elections to ratify pari-mutuel wagering permits be financed by the private entity that applied for the permit. Each pari-mutuel wagering permit applicant is required to deposit with the board of county commissioners a "sufficient sum" to "pay the expenses of holding the election."[1]

Under current law, the method of private financing that you propose is permissible. While many statutory provisions now expressly require a specific method of public payment for other types of public elections, these provisions do not apply to the referendum election at issue in your request.[2] For example, section 100.011(3), Florida Statutes (2012), requires the county or state to pay for the expenses of holding elections for county and state offices. That section does not apply to referendum elections. Section 100.201, Florida Statutes (2012), requires the costs associated with a bond referendum to be paid from the treasury of the government entity issuing the bond. Likewise, that section does not apply to referenda such as you describe in your request. Section 100.241, Florida Statutes (2012), requires that the costs of conducting a freeholder election or referendum be paid by the government entity requiring the election or referendum. That section is also inapplicable to your proposed referendum, which is a referendum of all electors qualified to vote, not just registered voters who are property owners. On the other hand, section 550.054, which applies to pari-mutuel wagering elections, requires a specific method of private financing for a public election.

The Legislature's expressed intent to dictate specific methods of financing some types of public elections but not others presumes the Legislature did not intend to limit other potential sources of

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[1] Section 550.054(7) requires the prepaid election costs to be refunded to the permit applicant if the Division of Pari-Mutuel Wagering refuses to grant the permit. You have stated that Miami-Dade County will require a non-refundable prepayment that will represent the cost of conducting the election. Therefore, regardless of the outcome of the non-bond referendum election, the Miami-Dolphins organization would not be refunded, reimbursed or otherwise repaid in part or *in toto* for the prepaid cost of the election.

[2] *See, e.g.*, § 101.6102(4), Fla. Stat. (2012) (requiring the costs of a mail ballot election to be borne by the jurisdiction initiating the calling of the election); § 190.016(9), Fla. Stat. (2012) (requiring community development districts to reimburse counties for the expenses incurred in calling or holding certain bond elections); § 153.61, Fla. Stat. (2012) (requiring use of proceeds of any bonds or other obligations issued by water and sewer districts to reimburse counties for the expenses of the elections to create such districts); § 125.01(1)(y), Fla. Stat. (2012) (requiring districts to pay the costs of elections called at the request or for the creation of a district).

funding for elections such as the one you propose.[3] When the Legislature includes a requirement in one provision but excludes a similar requirement in other related contexts, it can be inferred that the omission was intentional because the Legislature "knows how to accomplish what it has omitted" elsewhere. *Olmstead v. F.T.C.*, 44 So. 3d 76, 82 (Fla. 2010) (quotation marks omitted) (citing *Cason v. Florida Dept. of Management Services*, 944 So. 2d 306, 315 (Fla. 2006)).

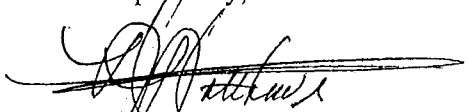
No Florida law or general rule of law stands for the proposition that the sole means of financing all public elections is by public funds. It is evident that the Legislature has chosen instead to specify the methods of private or public financing in some contexts, without the need to limit or otherwise dictate in all others. Section 550.054 now requires an interested private party to pay for the election costs as a condition of holding an election in a manner substantially similar to the plan you describe in your request. Thus, to the extent a universal public policy might have existed prohibiting the financing of public elections from private sources, such a policy cannot be inferred from current law.

The proposal under discussion shifts the cost of the election from the taxpayers to a private entity, while providing a transparent method of private financing that is in no way contingent upon the result of the election. The private entity will bear entirely the risk of an electoral outcome in which it has a substantial interest and will not be able to recover any of the prepaid costs of the election. We find nothing in Florida law to prohibit Miami-Dade County from requiring a private party to pay the cost of a referendum election in the manner that you describe in your request.

SUMMARY

Miami-Dade County may require a private party to pay the cost of conducting a non-bond referendum election to approve the use of tourist development tax dollars to fund the modernization of a sports stadium as a condition of holding the referendum election.

Respectfully,



Maria I. Matthews, Esq.
Director, Division of Elections

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[3] *See* Op. Att'y Gen. Fla. 63-25 (1963) (noting that section 100.011(3), requiring that elections for county offices be funded by the county, does not apply to the expenses of referenda, which therefore could be paid by another public entity).