



FLORIDA DEPARTMENT *of* STATE

CHARLIE CRIST
Governor

**KURT S.
BROWNING**
Secretary of State

June 5, 2009

Cara L. Campbell
Chair, Ecology Party of Florida
641 SW 6th Avenue
Fort Lauderdale, Florida 33315

RE: DE 09-04
Campaign Financing; Campaign Treasurer &
Reports, Political Parties –
Contributions, expenditures, anonymous donations,
and political party audits.
§§ 106.011(3), (4), 103.121(2), and 106.29(1)
Florida Statutes

Dear Ms. Campbell:

This letter responds to your request for an advisory opinion. You are the chairperson of a political party in Florida; therefore, the Division has the authority to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2008).

As background for your request, you relate that your political party currently has no candidates for political office, but the party is engaged in interventions with the Nuclear Regulatory Commission (NRC) and is raising funds to pay for expert testimony, travel expenses and incidental costs associated with this effort. Funds are being raised from donations directed for the NRC intervention; plus, anonymous donations are being received by “passing the hat” at fundraisers for the NRC effort. You have opened a separate bank account to receive all donations for non-election related purposes and will account for all receipts and payments with such funds in the political party’s bookkeeping records.

Based upon these facts, you ask essentially the following questions:

(1) Must a political party report under chapter 106, Florida Statutes (2008), donations received, and payments made, by the party that do not satisfy the statutory definitions of a contribution or an expenditure?

The short answer to this question is “no.” Section 106.29(1), Florida Statutes (2008), requires the applicable executive committee of the political party to report its “contributions” and

“expenditures.” The definitions of “contribution” and “expenditure” within chapter 106, Florida Statutes, require the donation and payment be “made for the purpose of influencing the results of an election or making an electioneering communication.”¹ Your intervention with the NRC does not relate to an “election.”² Your situation is more akin to that in *Division of Elections Opinion 76-27* (September 2, 1976), wherein we opined that donations to a political party exclusively for the purchase of real property for use as the party headquarters when such funds are segregated in a separate account are not reportable contributions. Under your factual situation, the political party is not receiving reportable donations or making reportable payments. However, the chair and treasurer of a political party’s executive committee are accountable for the party’s funds and the state executive committee’s funds “shall be publicly audited at the end of each calendar year and a copy of such audit furnished to the Department of State for its examination prior to April 1 of the ensuing year.”³ Such audited funds would include even those that are not considered “contributions” or “expenditures” by chapter 106, Florida Statutes.

(2) Is it permissible under chapter 106, Florida Statutes (2008), for a political party to receive anonymous donations by “passing the hat” at fundraisers held solely to raise funds to make payments for non-election related activities?

The short answer to this question is “yes.” As stated above, the donations described in your factual scenario do not satisfy the definition of a “contribution” within chapter 106, Florida Statutes. While we have previously opined that Chapter 106 would preclude the use of anonymous “contributions” by campaigns,⁴ we find nothing within the Election Code that prevents a political party from “passing the hat” at a fundraiser resulting in anonymous donations when it is clearly made known to the audience that the funds received will be used solely for the party’s non-election purposes and the party thereafter limits the use of the funds to such purposes.

SUMMARY

Political parties must file campaign finance reports under Chapter 106, Florida Statutes, containing their contributions and expenditures. If the funds received or paid by the political party do not satisfy the statutory definitions of a contribution or expenditure, then the political party need not report such funds on campaign finance reports filed under chapter 106, Florida Statutes. Political parties may therefore receive anonymous donations by “passing the hat” at a fundraiser when the donations are not made for the purpose of influencing the results of an

¹ §§ 106.011(3)(a) and (4)(a), Fla. Stat. (2008). The definitions also include other components that are not relevant to the factual situation herein. With respect to the reference to “electioneering communication,” a permanent injunction has been entered against the Department of State and the Florida Elections Commission from enforcing Florida’s electioneering communication laws of chapter 106, Florida Statutes. *Broward Coalition of Condominiums v. Browning*, Case No. 4:08cv445-SPM/WCS (N.D. Fla. May 22, 2009).

² See § 106.011(6), Fla. Stat. (2008), for the definition of “election.”

³ § 103.121(2), Fla. Stat. (2008).

⁴ *Division of Elections Opinion 89-02* (April 5, 1989).

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election and are not subsequently used as a "contribution" or "expenditure." However, all funds of a political party's state executive committee, including those funds that did not result from "contributions," must be publicly audited annually and the audit furnished to the Department of State.

Sincerely,

Sarah Jane Bradshaw

for Donald L. Palmer
Director, Division of Elections