DE 96-01 - June 18, 1996

Public Campaign Finance
§§103.091; 103.21; 106.08(2); and 106.33(3), Fla. Stat.

TO: The Honorable William N. Meggs, State Attorney, Second Judicial Circuit of Florida, Leon County Courthouse, 301 South Monroe Street, Tallahassee, Florida 32399-2550

Prepared by: Division of Elections

This is in response to your request for an advisory opinion, regarding Florida campaign finance law, pursuant to Section 106.23(2), Florida Statutes. The Division is authorized to provide advisory opinions when requested by any local officer having election-related duties, relating to any provisions or possible violations of Florida election laws with respect to actions such local officer having election-related duties has taken or proposes to take.

You have received a complaint filed against Frank Brogan alleging violations of Florida Election law and pursuant to Section 106.25(1), Florida Statutes, you are authorized to investigate and dispose of alleged election law violations. Therefore, the Division has authority to render this opinion to you. Opinions of the Division of Elections are legally binding on the person who seeks the opinion until the opinion is amended or revoked by the Division or a court of competent jurisdiction. Section 106.23(2), Florida Statutes, Smith v. Crawford, 645 So. 2d 513, 521 (Fla. 1st DCA 1994).

You ask:

1. Do the provisions of Section 106.08(2)(b)2, Florida Statutes, apply when calculating the contributions received by a candidate pursuant to Section 106.33, Florida Statutes?

2. Do the definitions of "national, state and county executive committees of a political party," under Section 106.33, Florida Statutes, include affiliated party clubs, or groups using the name of the party as part of its own name?

3. Would the activities of an employee of a "national, state or county executive committee" in assisting the campaign of a candidate constitute a "contribution" to the candidate under Section 106.33, Florida Statutes?

For reasons which follow, the answer to your first question is yes; the answer to your second question is no and the answer to your third question depends on what activities a person is engaging in when assisting a candidates campaign.

Section 106.08, Florida Statutes, provides the general contribution limits for all candidates. Subsection (2) of Section 106.08, Florida Statutes, provides for a $50,000 cap with respect to contributions received from a political party. There are also some exceptions to these contributions in subparagraph

2. of paragraph (b) of subsection (2). Specifically:

> Polling services, research services, technical assistance, and voter mobilization efforts are not contributions to be counted toward the contributions limits of this subsection.

Section 106.33(3), Florida Statutes, provides the following political party contribution limits with respect to candidates participating in public campaign finance:

> ....a candidate shall...limit....contributions from...executive committees of a political party to $25,000 in the aggregate....

Thus, the precise issue presented is whether the exceptions for political party contributions to all candidates found at Section 106.08(2)(b)2., Florida Statutes, apply to the political party contributions found at Section 106.33(3), Florida Statutes, for those candidates participating in public campaign finance.

Public funding of gubernatorial and cabinet level candidates is found at Sections 106.30-106.36, Florida Statutes, otherwise known as the "Florida Election Campaign Financing Act" (Act). The legislative intent behind the Act is clearly set forth at Section 106.31, Florida Statutes, which in its entirety, provides:

> The Legislature finds that the costs of running an effective campaign for statewide office have reached a level which tends to discourage persons from becoming candidates and to limit the persons who run for such office to those who are independently wealthy, who are supported by political committees representing special interests which are able to generate substantial campaign contributions, or who must appeal to special interest groups for campaign contributions. The Legislature further finds that campaign contributions generated by such political committees are having a disproportionate impact vis-a-vis contributions from unaffiliated individuals, which leads to the misperception of government officials unduly influenced by those special interests to the detriment of the public interest. The Legislature intends ss.106.30—106.36 to alleviate these factors, dispel the misperception, and encourage qualified persons to seek statewide elective office who would not, or could not, otherwise do so. (Emphasis added.)
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> Of note, nowhere in this statement of intent is there any mention of political party contributions being among the special interests that unduly influence the political process. Indeed, the legislature appeared to be primarily concerned with the independently wealthy and political committees. Conner v. Division of Elections, 643 So. 2d 75 (Fla. 1st DCA 1994).

With the foregoing in mind, it does not necessarily follow that because the cap on party contributions was reduced from $50,000 to $25,000 and no mention was made of the Section 106.08(2) exceptions, that those same exceptions should not be applicable to candidates participating in public funding. Again, it would appear that the legislature was concerned with total contributions, not exceptions. As stated by the court in Smith v. Crawford, 645 So. 2d 513, at 522 (Fla. 1st DCA 1994).

> ...statutes which relate to the same or closely related subject matter are to be regarded as in pari materia and should be construed together and compared with each other.

Here, the subject matter at issue is whether, by reducing the aggregate amount of party contributions in Section 106.33(3), Florida Statutes, the legislature intended that the same exceptions available to candidates not participating in public campaign finance, should be available to those that were. If the answer is no, then such a conclusion would mean that the legislature wanted non-participating candidates to enjoy an advantage over those participating in public campaign finance. Thus, when the legislature reduced the aggregate amount from $50,000 to $25,000, it could not have intended that non-participating candidates should be allowed to take advantage of polling services, technical assistance, etc., but candidates receiving matching funds could not.

Thus, candidates who are participating in public campaign finance under the provisions of the Florida Elections Campaign Financing Act are not forbidden from accepting the same non allocable contributions from political parties as non-participating candidates—the aggregate amount of allocable contributions is simply less ($25,000 as opposed to $50,000).

As to question number 2, political clubs are not the same as political parties. A political club is a person other than an individual, which must register as a political committee, if it plans on receiving contributions or making expenditures in excess of $500, in the aggregate, during a calendar year, for the purpose of influencing an election. Routine operating expenses such as utilities, luncheon expenses, or inviting candidates to speak would not be included as political contributions or expenditures, provided the club is not promoting or endorsing one candidate over another. See §§106.011 and 106.03(1), Fla. Stat.

Political parties, are organized and operated pursuant to Sections 103.091 and 103.121, Florida Statutes. These laws provide, among other things, that political parties must be organized under a written constitution, bylaws, and rules and regulations which must be filed with the Department of State; provide the manner of election for the members of the state or county executive committees; and, provide for the receipt of party assessments collected by the Department of State from candidate filing fees. Candidates for membership to the state and county executive committee of a political party are required to qualify with either the supervisor of elections or the Department of State and serve four-year terms commencing on the first day of the month following each presidential general election.

On the other hand, political clubs are not recognized nor provided for in the Florida Election Code. This is not to say that such clubs cannot organize and freely associate, but only that they are not in any way regulated or treated under the law as a political party. Moreover, Section 103.081(2), Florida Statutes, prohibits a club from using the name of a political party without the written permission of the state executive committee. Therefore, a political club is not the same as a political party.

Question 3 is somewhat problematic. However, given the answer to question one, the answer to your third question would depend on whether the "activities" in question fell into one of the exceptions in Section 106.08(2)(b)2., Florida Statutes. "Polling services," "technical assistance," and "voter

mobilization efforts" are somewhat ambiguous terms. We note without further comment the court's holding in Bouters v. State, 659 So. 2d 235 (Fla. 1995), that a vague statute is one wherein men of common intelligence must necessarily guess at its meaning and differ as to its application. We also note that for the past two years the Division has sponsored legislation to cure this language. See enclosures related to campaign finance reform labeled "1995" and "1996".

In conclusion, we believe the answers to questions 1 and 2 are, respectively, yes and no. With regard to question 3, we are unable to give a precise answer. However, we believe the language in Section 106.08(2)(b), Florida Statutes, is susceptible to many and varied interpretations when trying to decide whether a persons activity constitutes conduct of the kind proscribed or allowed therein. If a persons activities are limited to polling services, research services, technical assistance, or voter mobilization, as these terms are commonly understood from their ordinary dictionary definitions, they would not be includable as a contribution. See State v. Stewart 374 So.2d 1381, 1383 (Fla. 1979).

SUMMARY

The provisions of Section 106.02(2)(b)2., Florida Statutes, apply to contributions received by a candidate pursuant to Section 106.33, Florida Statutes. National, state, and county executive committees of political parties are not political clubs. Political clubs are private organizations which may use the name of the political party as long as they have the permission of the political party with which they are affiliated. Whether the assistance of a political party is exempt from being a contribution depends on whether such assistance is capable of being defined as polling services, research services, technical assistance, or voter mobilization according to the ordinary dictionary definition of those words.