DE 78-37 - August 21, 1978

Campaign Contributions; Proceeds From Sale Of Property
ss. 106.011 and 106.08, F.S.

To: Mr. Bruce A. Smathers, P.O. Box 150, Tallahassee, Florida 32302 Prepared by: Division of Elections

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By your letter of July 28, 1978, an advisory opinion of this office was requested in answer to the following questions:

> "A) Is the sale of any property, real or personal, by a candidate as defined by Florida Statutes, Chapter 106, for fair market value in which title is passed considered to be a contribution under Florida Statutes, Chapter 106?
>
> B) Is the person who bought the property (personal or real) paying fair market value and receiving title from the candidate considered to have made a contribution as defined in ch. 106, F.S.V"?

The procedures outlined in your questions appear to contemplate a sale for which the candidate will personally receive compensation, most likely cash, which will be deposited in a personal bank account. Thereafter, the candidate will transfer from that personal account a certain amount to his/her campaign account. This transfer will be either a direct unrestricted contribution or a contribution in the form of a personal loan.

As you may be aware, the U.S. Supreme Court has found restrictions on the amount a candidate may give to his own campaign to be unconstitutional. Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612, 46 L. Ed.2d 659 (1976). In the absence of a judicial determination regarding Florida's law, the Attorney General opined that the reasoning and holding of the Buckley court were applicable to this state and should be followed. Op. Att'y Gen. Fla. 076-145 (June 28, 1976). The effect of these developments has been that, under Florida's campaign financing law, a candidate may contribute unlimited amounts to his/her own campaign.

The election law defines "contribution" in pertinent part as being:

> "A gift, subscription, conveyance, deposit, loan, payment, or distribution of money or anything of value, including contributions in kind having an attributable monetary value in any form, made for the purpose of influencing the results of an election." s. 106.011(3)(a), F.S.

Clearly, a deposit in your campaign account of the proceeds from a sale of property constitutes a contribution to your campaign. The crucial questions to be answered, contemplated somewhat in your

second question, are when in fact was the contribution made and from whom.

The election code requires all contributions to be made directly from an identifiable contributor to the campaign account of a candidate or political committee. Contributions "earmarked" for a specific destination, while permissible under federal election laws, are not allowed in Florida. Furthermore, a contribution may not be made "through or in the name of another, directly or indirectly, in any election." s. 106.08(3), F.S. (1977).

In the event the sale of a candidate's property is being made to someone in lieu of a direct contribution, or the purchaser is fully aware that the proceeds from the sale will go into a campaign account and for that sole reason is willing to make the sale, it would appear an indirect contribution has been made. Such is in violation of the law and must be avoided.

However, a normal "arms-length" transaction in which the purchaser is either unaware of or not solely motivated by, the fact that the sale's proceeds may go to a political campaign is not an indirect contributor. Under such circumstances, the purchaser is not a contributor to the campaign. Since the revenue from the sale will pass through a personal account, the candidate will be the contributor and may exceed the contribution limit of $3,000 per election, s. 106.08(1), F.S.

Should the candidate wish to designate his/her contribution as a loan to the campaign, it must be indicated as such on the next campaign treasurer's report. It is not mandated by law, but suggested that a contemporaneous letter or memorandum to the campaign treasurer be prepared for retention in the campaign records reflecting the fact that the candidate has made a loan to the campaign and the repayment schedule, i.e., the terms of the loan.

Therefore, in answer to your questions, assuming a normal "arms-length" transaction, the sale of any of a candidate’s property, personal or real, does not constitute a contribution to his/her campaign, and the purchaser is not a contributor. When the proceeds are deposited in the campaign account after being transferred from the candidate's personal account, a personal contribution is made and must be so reported. As noted above, care should be taken to avoid even the appearance, and, of course, the actuality, of an indirect contribution by a purchaser solely motivated to complete the transaction in order to assist a campaign.

SUMMARY

The sale of a candidate's real or personal property does not constitute a campaign contribution if the proceeds are received by the candidate pursuant to a legitimate "arms-length" transaction, and following deposit in his/her personal account, transferred to the campaign account. The candidate, not the purchaser, is the contributor and must be reported as such.