DE 98-01 - February 12, 1998

Public Campaign Finance
§§ 103.121(1), 106.08(2),F.S., and Chapter 97-13, Laws of Florida.

TO: Mr. Scott Falmlen, Executive Director, Florida Democratic Party, 517 North Calhoun Street, Tallahassee, Florida 32301

Prepared by: Division of Elections

This is in response to your request for an advisory opinion regarding Florida campaign finance law and follows our January 30, 1998, letter to you on this same subject. You are the Executive Director of the Florida Democratic Party and, pursuant to section 106.23(2), Florida Statutes, the Division has authority to render this opinion to you.

You ask:

> May candidates who are participating in the Florida Election Campaign Financing Act accept the same nonallocable contributions from political parties as non-participating candidates.

As we stated in *Op. Div. Elect. 96-01, June 18, 1996* (hereafter DE 96-01), candidates who participate in public campaign finance are not forbidden from accepting the same nonallocable contributions from political parties as nonparticipating candidates; however, the amount of allocable contributions which can be received from a political party by a participating candidate is $25,000 not $50,000. *§106.33(3), Fla. Stat.* Except as follows, there is no need to repeat the reasoning behind DE 96-01. However, for the sake of clarity some discussion of this law, as amended by *chapter 97-13, Laws of Florida,* may be helpful.

Effective January 1, 1998, the relevant portions of section 106.08(2), Florida Statutes, provide:

> (2)(a) A candidate may not accept contributions from...a political party, which contributions in the aggregate exceed $50,000,... .
> (b) Polling services, research services, costs for campaign staff, professional consulting services, and telephone calls are not contributions to be counted toward the contribution limits of paragraph (a). Any item not expressly identified in this paragraph as nonallocable is a contribution in an amount equal to the fair market value of the item and must be counted as allocable toward the $50,000 contribution limits of paragraph (a).

The purpose of the amendment to this subsection was to redefine what constitutes a contribution for the purposes of the total cap on political party contributions. *Staff of Fla. H.R. Comm. On Election Reform, CS/HB 461, HB 281 & HB 75 (1997) Final Bill Research and Economic Impact Statement (on file with committee).* Thus, polling services, research services, costs for campaign staff, professional consulting services, and telephone calls are not contributions which must be allocated and

counted toward the $50,000 cap on party contributions (hence, the term nonallocable). Conversely, anything other than these specifically enumerated items must be counted toward the overall limit of $50,000 and are referred to in the law as "allocable" contributions. *§ 106.08(2)(b), Fla. Stat.*

While the purpose of the new law is to add some clarity, *Fla. H.R. Comm. On Election Reform, Final Bill Research and Economic Impact Statement, supra,* we would point out here, as we did in DE 96-01, that these terms must be interpreted in their plain and ordinary sense. In addition, we should point out that it is the opinion of the Division that these various nonallocable costs refer to a party's cost of doing business on behalf of its candidates, not the candidates' cost of running his or her campaign.

By law, political parties have both the power and the duty to nominate candidates and campaign for their nominees, *§ 103.121(1)(a), Fla. Stat.*, subject of course to other restrictions imposed by law such as chapter 106, Florida Statutes. Thus, for example, if a political party thought that one of its candidates needed technical assistance or professional consultant services on health care issues and could benefit from expert advice in this area, it appears that under section 106.08(2)(b), Florida Statutes, the party could retain such an expert at the party's expense without this cost being allocated towards the expenditure cap. Similarly, the party could operate a phone bank for the purpose of calling voters to urge support of the party's candidate or candidates. On the other hand, the law should not be interpreted to allow a candidate *carte blanche* authority to simply hire his or her own staff and send the party an invoice for these services. Such expenditures are the party's to make in whatever manner they deem necessary in the course of campaigning for their candidates, not at the unrestricted discretion of a particular candidate.

SUMMARY

The provisions of section 106.08(2)(b), Florida Statutes, apply to candidates who are participating in public campaign financing. Whether the assistance of a political party is classified as a nonallocable contribution depends on whether such assistance is capable of being defined as polling services, research services, costs for campaign staff, professional consulting services, or telephone calls. *See DE 96-01*. Such contributions (i.e., party expenditures) are for the party to make as it deems necessary. They are not campaign expenditures by the candidate which, in turn, are chargeable by the candidate to the party.