

DE 02-07 - June 3, 2002

**Matching Funds
§ 106.33, Florida Statutes**

*To: Mr. John E. Thomas, Esquire, Gardner, Wilkes, Shaheen & Candelora, Post Office Box 1810,
Tampa, Florida 33601-1810*

Prepared by: Division of Elections

Dear Mr. Thomas:

This is in response to your request for an advisory opinion on behalf of Bill McBride, a Democratic candidate for Governor for the 2002 election. Pursuant to section 106.23(2), Florida Statutes, the division has authority to issue advisory opinions to candidates. You ask essentially the following:

Can a gubernatorial candidate who initially loans his or her campaign more than \$25,000 prior to qualifying, but who repays any loaned amount that is greater than \$25,000 prior to qualifying, be eligible for and receive public financing matching funds under sections 106.33, 106.35 and 106.355 of the Florida Statutes?

The short answer to your question is yes.

Sections 106.30-106.36, Florida Statutes, are known as the "Florida Election Campaign Financing Act." This act provides public dollars to candidates running for Governor or for a Cabinet office who agree to abide by certain campaign contribution and expenditure limitations.

Specifically, section 106.33, Florida Statutes, states as follows:

Each candidate for the office of Governor or member of the Cabinet who desires to receive contributions from the Election Campaign Financing Trust Fund shall, upon qualifying for office, file a request for such contributions with the filing officer on forms provided by the Division of Elections. If a candidate requesting contributions from the fund desires to have such funds distributed by electronic fund transfers, the request shall include information necessary to implement that procedure. For the purposes of ss. 106.30-106.36, candidates for Governor and Lieutenant Governor on the same ticket shall be considered as a single candidate. To be eligible to receive contributions from the fund, a candidate may not be an unopposed candidate as defined in s. 106.011(15) and must:

- (1) Agree to abide by the expenditure limits provided in s. 106.34.
- (2)(a) Raise contributions as follows:
 1. One hundred fifty thousand dollars for a candidate for Governor.

2. One hundred thousand dollars for a candidate for Cabinet office.

(b) Contributions from individuals who at the time of contributing are not state residents may not be used to meet the threshold amounts in paragraph

(a) For purposes of this paragraph, any person validly registered to vote in this state shall be considered a state resident.

(3) Limit loans or contributions from the candidate's personal funds to \$25,000 and contributions from national, state, and county executive committees of apolitical party to \$25,000 in the aggregate, which loans or contributions shall not qualify for meeting the threshold amounts in subsection (2). (emphasis added)

(4) Submit to a postelection audit of the campaign account by the division.

The purpose of the Florida Election Campaign Financing Act was to provide financial support for candidates to enable them to fund a campaign for statewide office without undue dependence on special interests or reliance on personal wealth, thereby making candidates more responsive to the voters of Florida. See section 106.31, Florida Statutes. In interpreting section 106.33, Florida Statutes, the division is mindful of the Legislature's stated intent and of the fact that the Act itself is remedial in nature, and therefore, "should be liberally construed so as to suppress the evil identified by the Legislature and to advance the remedy intended." Conner v. Division of Elections, 643 So.2d at 77, (Fla. 1st DCA 1994). See also, Smith v. Crawford, 645 So.2d 513, (Fla. 1st DCA 1994).

The division has previously interpreted this section to allow a candidate who has previously loaned their campaign an amount in excess of \$25,000, and who has been repaid any amounts in excess of \$25,000 prior to qualifying, to be eligible for these dollars.

The division has viewed the eligibility requirement contained in section 106.33(3), Florida Statutes, to be one that is applicable at the time that the candidate files their request for these funds. The statutory language contained in section 106.33, Florida Statutes, does not appear to prevent a candidate from curing a potential bar to participation if that cure occurs prior to the triggering event for requesting these funds, i.e., qualifying for office. In fact, pursuant to section 106.33, Florida Statutes, it is upon filing the request for contributions from the Election Campaign Financing Trust Fund that the candidate agrees to abide by the restrictions contained in that section, not before. It is not unreasonable to expect that a candidate first opening a campaign account and testing the political waters prior to qualifying might not yet have decided whether or not they will seek funding under this section. In those initial stages, a candidate, before ultimately deciding to seek funds under this section, might also loan monies to their campaign account.

However, upon filing the request for funds at the time of qualifying, the candidate is then subject to the limitations contained in the Act. The division then reviews the request pursuant to section 106.35, Florida Statutes, to determine eligibility, and certifies whether the candidate is eligible. That decision is appealable to the Florida Elections Commission. See section 106.35(1), Florida Statutes.

This interpretation is consistent with the stated purpose of the Legislature. Section 106.31, Florida Statutes. Allowing a candidate to cure a personal loan threshold defect prior to qualifying for office

and upon qualifying, filing their request for matching funds permits more candidates to participate in a campaign funding process that is less reliant on special interests. Additionally, the repayment of personal loans by the candidate to the campaign in excess of \$25,000 for the purposes of receiving matching funds also limits a person's ability to self fund their own campaign. Therefore, the division does not view loans made by a candidate to their campaign in excess of \$25,000 which have been repaid to the candidate by the campaign prior to qualifying for office and requesting matching funds to be a bar to a candidate's eligibility for funds under section 106.33, Florida Statutes.

SUMMARY

A gubernatorial candidate who initially loans his or her campaign more than \$25,000 prior to qualifying, but who repays any loaned amount that is greater than \$25,000 prior to qualifying, is not barred from receiving public financing matching funds under sections 106.33, 106.35 and 106.355 of the Florida Statutes.

Sincerely,

L. Clayton Roberts
Director, Division of Elections

Prepared by:
LCR/SDL/ees