

DE 02-17 - October 24, 2002

**Use of Surplus Funds to Refund Contributions to Attend a Cancelled Fundraising Event When
a Candidate Has Received Matching Funds
§ 106.011(3)(a), 106.11(5), 106.141(4), Florida Statutes**

*To: Ms. Janet Reno, c/o Mr. Mark Herron, Esquire, Messer, Caparello & Self, Post Office Box 1876,
Tallahassee, FL 32302-1876*

Prepared by: Division of Elections

Dear Ms. Reno:

This is in response to your request for an advisory opinion. As a former Democratic candidate for Governor in the 2002 Primary Election, the division has the authority to issue an opinion to you pursuant to section 106.23(2), Florida Statutes.

For purposes of this opinion, you have presented the following facts. You were a Democratic Primary candidate for election to the office of Governor who was eliminated as a candidate as a result of the Primary Election held on September 10, 2002. While a candidate for the office of Governor you participated in public campaign financing and received matching funds pursuant to the Florida Election Campaign Financing Act (sections 106.30 - 106.36, Florida Statutes). Prior to the September 10, 2002 Primary Election you scheduled a campaign fundraising event for September 18, 2002, for which contributions were solicited and received prior to the Primary Election. The fundraising event was an Elton John concert. On September 16, 2002, you notified contributors that the September 18, 2002 fundraising event was cancelled and advised them that they could request a refund of their donation if the event was not rescheduled. The event was not rescheduled. You state that some of the persons who made contributions in connection with that fundraising event have asked that you refund their contributions.

You ask essentially the following:

May the campaign return the contributions of those persons who have requested a refund due to the cancellation of the September 18, 2002 event?

The short answer to your question is no.

As you note in your letter, section 106.11(5), Florida Statutes, provides that an eliminated candidate may expend funds from the campaign account to: purchase "thank you" advertising for up to 75 days after they were eliminated; pay for items which were obligated before the candidate was eliminated; pay expenditures necessary to close down the campaign office and to prepare final campaign reports; and dispose of surplus funds as provided in section 106.141, Florida Statutes.

Section 106.141, Florida Statutes, specifically provides that an eliminated candidate shall, within 90 days, dispose of funds on deposit in their campaign account and file a report reflecting the disposition of all remaining funds. Such a candidate cannot accept contributions after they have been eliminated. An eliminated candidate may, prior to the disposition of the surplus campaign funds, be reimbursed for any reported contributions by the candidate to the campaign. Section 106.141(4)(a), Florida Statutes, then outlines the methods by which surplus funds can be disbursed. One of those methods is a pro rata return of funds that have not been spent or obligated to each contributor. However, section 106.141(4)(b), Florida Statutes, overrides any other surplus funds disposal option by requiring that any candidate who is disposing of surplus funds and who has received contributions from the Election Campaign Financing Trust Fund must return all surplus funds to the trust fund.

In the scenario that you describe, you received contributions prior to September 10, 2002 for a planned fundraising event. There is no provision in Chapter 106, Florida Statutes, that provides for the "conditional" giving of a contribution to a campaign, i.e. conditioned on the fundraising event actually occurring. A "contribution" is defined in section 106.011(3)(a), Florida Statutes, as a "gift, subscription, conveyance, loan, payment, or distribution of money or anything of value...made for the purpose of influencing the results of an election." While the definition of a "contribution" does provide for the giving of a "loan" to a candidate, these contributions, as described by you, were not given in the form of a "loan." Consequently, you could not have "obligated" such funds for a refund before you were eliminated as a candidate as provided for in section 106.11(5)(b), Florida Statutes, and cannot return them under that provision. Further, because you received matching funds from the Election Campaign Financing Trust Fund, you are required to return all surplus funds to the trust fund. You, therefore, may not provide refunds to those contributors who have requested them.

SUMMARY

Pursuant to section 106.141(4)(b), Florida Statutes, because of your participation in the Florida Election Campaign Financing Act, you are required to return all surplus campaign funds to the Election Campaign Financing Trust Fund. You may not provide refunds to contributors who bought tickets to a campaign fundraising event that was later cancelled.

Sincerely,

Edward C. Kast
Director, Division of Elections

Prepared by:
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