

DE 78-06 - February 14, 1978

Campaign Loans
ss. 106.011, 106.07, 106.08, 106.11, 106.141, F.S.

To: Mr. W. Edward Hand, Certified Public Accountant, Suite F-227, 325 John Knox Road, Tallahassee, Florida 32303

Prepared by: Division of Elections

By your letter of December 30, 1977 an opinion of this office was requested in answer to the following questions:

1. "If a candidate loans money to a campaign in order to finance the initial start-up costs, is it allowable to repay the loan out of any excess funds at the end of the campaign?"
2. "If it is allowable, is it also necessary to repay the loan on a pro-rata basis with each other contributor receiving a refund or a portion of their initial contribution (based on the ratio that their contribution bears to the total contributions received in the campaign)?"
3. "If it is not allowable to refund the excess funds to the candidate or to the contributors on a pro-rata basis, what is the proper disposition of the excess funds and what is the time requirement for disposing of such funds?"

The use of loans to political campaigns is explicitly contemplated by the inclusion of the term "loan" within the statutory definition of "contribution." s. 106.011(3)(a), F.S. (1977). A loan owed by a committee or candidate which relates to the conduct of any political campaign is a contribution for chapter 106 purposes and must be reported as such by the campaign treasurer. See s. 106.07(4)(k), F.S. Furthermore, a loan is subject to statutory limitations on contributions, other than from the candidate, imposed by s. 106.08, F.S.

A loan to a campaign necessarily includes the incurring of an obligation to repay it. Such repayment can be satisfied only by means of an expenditure from the campaign account. A candidate, campaign manager, treasurer, deputy treasurer, or any other person acting on his behalf may not authorize any expenditure or sign a check drawn on the primary campaign account unless there are sufficient funds on deposit therein to pay the expenditure, s. 106.11(3), F.S.

You have inquired as to the repayment of campaign loans from excess funds at the conclusion of the campaign. The statutory provision for disposition of such funds was enacted as part of the 1977 election law revision. It provides a special procedure for the disposition of surplus funds which are described as those which ". . . have not been spent, or obligated to be spent, with respect to a campaign which has been conducted..." s. 106.14(4), F.S. (1977).

By definition any outstanding financial obligation of a campaign must be satisfied prior to the determination of the existence of any surplus funds. As the loan by necessity entails the obligating of

funds, the loan obligation and surplus funds are mutually exclusive and it is an impossibility for a repayment to be made from surplus funds. Accordingly, your first question is answered in the negative.

Due to the negative answer to the first question, it is not necessary to answer the second.

Your third question asks what is the proper disposition of surplus funds. The law mandates that any candidate required to dispose of surplus funds shall do either of the following at the option of the candidate:

"(a) Return pro-rata to each contributor the funds which have not been spent, or obligated to be spent. . . , or

(b) Give the funds which have not been spent, or obligated to be spent. . . .

1. In the case of a candidate for state office, to the State, to be deposited in the General Revenue Fund, or, In the case of a candidate for an office of a political subdivision, to such political subdivision, to be deposited in the general fund thereof." s. 106.141(4), F.S.

Such disposition must be made within ninety days of a candidate withdrawing, being eliminated, or being elected, s. 106.141(1) & (2), F.S. A victorious candidate may retain certain amounts in the campaign account to be "used only for legitimate expenses in connection with his public office." s. 106.141(5), F.S. A report of the disposition must be filed with the officers with whom the candidate has been required to file regular campaign financial reports, s. 106.141(6), F.S.

SUMMARY

A loan relating to the conduct of any political campaign must be reported as such in the campaign treasurer's report. It constitutes the incurring of an obligation to make an expenditure to repay the loan and may not therefore be repaid from surplus funds at the conclusion of the campaign. The disposition of surplus funds is restricted to the manner provided in s. 106.141, F.S. (1977).