

DE 78-49 - November 22, 1978

**Committees Of Continuous Existence; Contributions To; Income.
ss. 106.011, 106.04, 106.08, F.S. (1977); 2 USC 431 (e)(4)**

To: Walter H. Alford, Esq., Southern Bell Telephone and Telegraph Company, Legal Department, 666 N. W. 79th Avenue, Miami, Florida 33144

Prepared by: Division of Elections

By your letter you requested a formal advisory opinion of this division on behalf of the Southern Bell Florida Political Action Committee (SoBell FLA-PAC) a committee of continuous existence, in answer to substantially the following questions:

1. If Southern Bell Telephone and Telegraph Company "absorbs or pays" the indirect costs of organizing and administrating SoBell FLA-PAC, and soliciting of the executive and administrative personnel will be borne by the Company, must these "indirect costs" be reported as contributions by the committee of continuous existence?
2. If these "indirect costs" are considered contributions, are the amounts of such contributions subject to the limitations in s. 106.08(1), F.S. (1977)?
3. Must the amounts of the "indirect costs," described in question 1, be reported as income on the annual report required by s. 106.04(4), F.S. (1977)?

As explained in the following discussion questions 1 and 3 are answered in the affirmative and question 2 in the negative.

You have stated in your letter that the "indirect costs" involved consist primarily of the following: Payment of legal and other expenses of organization; payment of administration (in the sense that the company will permit involved employees to administer the committee and solicit contributions from employees on company time and to use company facilities in doing so); and to make the company's accounting facilities available to employees who wish to make contributions to the committee by means of payroll deductions.

A committee of continuous existence is "any group, organization, association or other such entity certified pursuant to the provisions of s. 106.04." s. 106.011(2), F.S. (1977). "Organizations which are certified by the Department of State as committees of continuous existence pursuant to s. 106.04... shall not be considered political committees for the purposes of this Chapter." s. 106.011(1), F.S. (1977). Section 106.04(1), (2) and (3), F.S. (1977) detail the procedures which a group must follow and requirements it must meet in order to qualify for certification as a committee of continuous existence. If these concerns are met the certification) is issued by the Division of Elections.

Section 106.011(3), F.S. (1977) defines contributions in paragraphs (a) and (c) to be:

"(a) 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, (e.s.)."

(c) The payment by any person other than a candidate or political committee of compensation for the personal services of another person which are rendered to a candidate or political committee without charge to the candidate or committee for such services."

The part of the definition contained in paragraph (c) of 106.011 deals with "personal services," which certainly could be construed to be equivalent to legal and other organizational costs, accounting services, and administration and solicitation costs which are absorbed by the company. Paragraph (c) deals with a person, which under s. 106.011(8), F.S. (1977) Southern Bell is, making a payment for the services of another person which are rendered to a candidate or political committee. A committee of continuous existence is not a candidate, and by definition, could not be a political committee. Thus, this portion of the definition is inapplicable to committees of continuous existence.

Paragraph (a) of s. 106.011(3), F.S. (1977) would require that these indirect costs be reported as contributions to the continuous committee from the corporation. That paragraph in part stipulates that a contribution is "A gift, subscription, . . . or anything of value, including contributions in-kind having an attributable monetary value, made for the purposes of influencing the results of an election." It is clear that the indirect costs which are concerned here are of a definite value to the committee. If the value is not clearly ascertainable the services should be reported as in-kind contributions, at their fair market value as established by the contributor, s. 106.055, F.S. (1977).

Contributions are made for the "purpose of influencing the results of an election," When a committee of continuous existence is formed it may contribute to and support candidates, and if it desires to make expenditures in support of or opposition to issues it must also register as a political committee pursuant to Chapter 106. s. 106.04(5), F.S. (1977). Therefore, a committee of continuous existence is organized solely for the purpose of attempting to influence the results of elections, of either candidates or issues, or both. Thus, in making contributions to a committee of continuous existence the corporation is in fact, attempting to influence the results of an election. The absorption of indirect costs enables the committee to operate and maintain itself, and clearly has the same effect as if the services which are so provided were to be paid for by the committee itself.

The Federal Election Campaign Act exempts certain items from the term "contribution." See 2 USC 431(e)(4). However, this exclusion is applicable to "legal and accounting services rendered to or on behalf of a candidate or political committee solely for the purpose of insuring compliance with the provisions of this Act or Chapter 95 or Chapter 96 of the Internal Revenue Code of 1954 . . . but amounts paid or incurred for such legal or accounting services shall be reported in accordance with the requirements of section 304(b) (2 USC, s. 434)." Id. Such an exclusion is not specifically made in the Florida law. Therefore, in such a case it will not be recognized as being non-reportable under Florida Law. However, this exclusion does not appear to be pertinent in the instant case.

Therefore, your first question is answered in the affirmative, and the indirect costs, consisting of free

services supplied to a committee of continuous existence, should be reported as contributions.

Section 106.08, F.S. (1977) restricts contribution amounts which may be made by persons and political committees to candidates and political committees. A corporation is within the definition of person (s. 106.011(8)), and is therefore limited in the amount of certain contributions it may make. The limitations in section 106.08(1) extends to those made to candidates and political committees and not to committees of continuous existence. Such committees are specifically exempted from the definition of being a political committee. Thus, your second question is answered in the negative, and contribution amounts in s. 106.08 are not applicable to those contributions made to a committee of continuous existence.

Section 106.04(4), F.S. (1977) requires committees of continuous existence to submit an annual report to the Division of Elections during January. Such report is to contain the same information and materials as the original applications filed pursuant to s. 106.04(2), F.S. Part of the information required by subsection (2) is a complete financial statement or annual audit summarizing all income received and all expenses incurred by the organization during the 12 months preceding the date of application. In the case of an existing committee the statement should summarize the past 12 months or portions thereof in which the committee was registered. No definition is contained in Chapter 106 establishing what is to be included in the term "income," or "expenses."

It would appear that all available funds accruing to the use of the operation of a continuous committee will be the dues paid by its membership (at least 25 percent of its income) pursuant to the requirements of s. 106.04(1)(b), F.S., and contributions which it receives. The majority of its expenses should be contributions made by it to candidates, as that is its purpose for existence, and the remainder those general operating expenses associated with operating any business. Therefore, in the absence of a specific definition for the term income, it is the opinion of this office that all items, of whatever value, which accrue to the use and benefit of the committee of continuous existence, which enable it to carry out its purposes, are to be included on the statement required by s. 106.04(2), F.S., and are within the meaning of the term income. This would encompass the indirect costs, considered to be contributions, provided by the corporation. Thus, your third question is answered in the affirmative.

SUMMARY

If a corporation absorbs "indirect costs" of the operation of a committee of continuous existence (consisting of free legal, accounting and administrative services), which is formed by its officers and employees, these costs must be reported as a contribution by the committee received from the corporation. Section 106.08(1), F.S. (1977) does not limit the amount of contributions which may be made to a committee of continuous existence, however s. 106.04(2), F.S. requires that 25% of such a committee's income must derive from regular dues or assessments of the membership. Section 106.04 (4), F.S. which requires submission of an annual financial statement or audit by such a committee, summarizing all income and expenses, contemplates that all contributions received in whatever form will be included within the term income and so reported.