

DE 78-12 - February 27, 1978

**Campaign Contributors
s. 106.011, 106.08, F.S.**

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Prepared by: Division of Elections

By your recent letter you requested an opinion from this office in answer to substantially the following question:

Would the use in a county-wide bond election by a political committee of informational material prepared by Dade County or a contract consultant to Dade County which is available to the general public constitute a campaign contribution which would be limited in amount and require reporting?

Your question is answered in the negative.

To answer your question it is necessary to determine if the informational material constitute a "contribution" within the meaning of the election laws. Therein it is defined in pertinent part as:

"(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." s. 106.011(3), F.S. (e.s.).

The key element in determining if on item is a contribution is that it was made to influence the election. To fully implement the legislative intent of chapter 106, this office has consistently applied a broad interpretation to this final phase of the definition. Anything of value, which directly or indirectly, furthers a candidate's or committee's campaign has been deemed a contribution and need be reported.

In your question, however, the question is raised in a different context. The item is not received from a person in the private sector, but rather from an agency of county government. The material received has been described as printed matter, pictures, displays, studies and the like. These were prepared by a public agency or its contract consultant in the ordinary course of business and are available to the general public.

By statutory definition, these materials are public record within the meaning of chapter 119, F.S., and are by law available for inspection and copying upon payment of the cost of reproduction by members of the public.

The twin purposes of chapter 106, F.S. are to require reporting campaign contributions so the public may know "who gave it" and "who got it," and to limit the actuality or appearance of improper corrupting influences in the electoral process by imposing limitations on the amount any one person may contribute. Both of these have been upheld (in the federal law) as being constitutionally permitted and serving a legitimate governmental purposes by the U.S. Supreme Court. Buckley v. Valeo, 424 U. S. 1, 96 S.Ct. 612,146 L.Ed.2d 659 (1976).

However, when the originator of the material received is a government agency which has produced the item in the normal course of its business, I do not think the legislature intended it to be within the confines of chapter 106. By an earlier opinion, it was determined that the expenditures of public funds by a city commission in support of a ballot issue caused the commission to come within the statutory definition of "political committee." DE 077-24 (October 27, 1977); s. 106.011(1), F.S. But in that case, a public agency, namely a city governing body, was actively seeking to influence the results of an election by the expenditures public monies. In the situation considered here, the agency is merely providing materials it has otherwise unpiled.

The fact that such material may tend to support of oppose one position or another is immaterial. For example, the fact that a noted authority in a given field is quoted by a candidate or committee during a campaign, or his works relied upon to support or oppose some position, does not of itself make the effort of that person a contributor to the campaign. To hold otherwise would extend the law to an unrealistic and absurd length which would frustrate the electoral process.

To find that the receipt of materials from a public agency is a "contribution" under chapter 106 and subject to the contribution limitations of s. 106.08, F.S., would impose a restriction on an individual or entity from utilizing the services and resources of tax-supported public agencies. Florida has taken the lead among states in encouraging the public's participation in and access to their government agencies through such legislation as the Government-in-the-Sunshine Law and the Public Records Law. To find that the receipt of materials from a government agency is subject to campaign contribution limitation would be contrary to this and beyond the legislative intent.

By way of caveat, the foregoing is premised on the assumption that the public agency is not registered as a political committee, the agency is distributing materials and not public funds, and the items were prepared in a "Neutral" manner, i.e., not expressly prepared for any particular individual or group regardless of the position which may be taken by the agency. As these situations were not addressed in your inquiry, they are expressly not considered by this opinion.

SUMMARY

The receipt of materials from a public agency by a political committee which may tend to support or oppose an issue on a county-wide ballot does not constitute a "contribution" within the meaning of chapter 106, F.S.