

DE 78-23 - May 18, 1978

Contributions In-Kind

ss. 106.011, 106.021, 106.055, 106.07, 106.08, 106.011, 106.14, F.S. (1977)

To: Honorable Ralph D. Turlington, Commissioner of Education, P.O. Box 1393, Tallahassee, Florida 32302

Prepared by: Division of Elections

By your letter of April 20, 1978, an advisory opinion of this office was requested in answer to the following question:

"May a person subject to the limitations provided in s, 106.08, F.S., lawfully contribute the cost of events such as breakfasts, luncheons, dinners, receptions, etc., to a candidate for public office as an in-kind contribution?"

I assume by your question that you are referring to a situation in which a person hosting such an event as described in your question pays all or a portion of the cost of such meal or reception rather than making a monetary contribution in the amount of the cost of the event. Such being the case, your question is answered in the affirmative.

The Election Code of this state defines "contribution" 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.

(b) A transfer of funds between political committees, between committees of continuous existence, or between a political committee and a committee of continuous existence.

(c) The payment by a person other than a candidate or political committee or 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.

Notwithstanding, the foregoing meanings of 'contribution,' the word shall not be construed to include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee." s. 106.011(3), F.S. (e.s.).

Thus as seen in this definition, the concept of in-kind contribution is specifically identified and authorized. It must be noted that as with all contributions, it must be campaign-related.

An in-kind contribution is defined as that "having an attributable monetary value in any form." Id. The

standard and procedure to be followed in determining the value of such a contribution is provided by law. A 1977 amendment to the campaign financing law provides:

"Any person who makes an in-kind contribution shall, at the time of making such contribution, place a value on such contribution, which valuation shall be the fair market value of such contribution." s. 106.055, F.S.

The in-kind contribution must be reported by the campaign treasurer in the report required by s. 106.07, F.S. The law provides that certain information regarding the contributor be included in the report, s. 106.07(4)(a), F.S. The date the contribution was made and received by the treasurer (or his deputy) must be reported. As the statute set out above indicates, the value of an in-kind contribution must be determined at the time the contribution is made. This is the date on which it is the intent of the contributor to irrevocably turn over the benefit and use of the item to the candidate's campaign.

All contributions, in whatever form, must be made or received through the duly appointed campaign treasurer, s. 106.021(3), F.S. This language refers to all contributions as defined in s. 106.011(3), F.S. An in-kind contribution must therefore be promptly reported to the treasurer and a valuation placed on it by the contributor at that time. Such prompt reporting satisfies the making of the contribution through the treasurer.

The concept of in-kind contributions and the reporting of such has been considered by the courts of this state on one occasion in the case of Smith v. Ervin, 64 So.2d 166 (Fla. 1953). There the Supreme Court was asked to consider the constitutionality of s. 99.161, F.S. (1951), which, as adopted by the legislature in the 1951 election code revision, required reporting of contributions and expenditures by candidates, including contributions of "anything of value," which were required to be made through the campaign treasurer, s. 99.161(4), F.S. (1951). This statute, part of the original "who gave it, who got it law," is the predecessor to the current ch.106 provision.

The particular facts of the Smith case involved the donation of radio air time by the owner of a radio station to a particular candidate for public office. Exclusively at issue was the application of the election code to this contribution, as no "equal time" question under the Communications Act of 1934 was raised.

The court adopted the language of the circuit court stating:

"The owner or operator of a radio station if not otherwise prohibited may give time on the air to a candidate for public office or other citizen to express his views, in the furtherance of a candidacy, provided such advertising time is given as a contribution of a thing of value to the candidate, and recorded and reported as such. In any such case in which a gift of time on a radio is made, in order to comply with the intent of Section 99.161(4)(a), the owner of the radio station must make the gift through the treasurer of the candidate who is to be benefited by the use of the time and be listed as a contribution of radio time in the amount of the value of such time." Smith v. Ervin, 64 So.2d 166, 167 (Fla. 1953).

As can be seen the concept of in-kind contributions has long been recognized in this state. The law clearly contemplates the practical reality that a person may desire to give something of value rather than give money to the campaign. However, in-kind contributions are not intended to be utilized in place of direct expenditures to the vendor from the campaign account by check. See ss. 106.011 and 106.14, F.S.

An in-kind contribution is somewhat of an exception to s. 106.14(1), F.S., which otherwise requires payment from the campaign account directly to the provider of the good or service prior to the receipt and use of such good or service. Such direct expenditures clearly reflect to whom the candidate's "business", so to speak, went. Therefore, it is urged that in-kind contributions should be reported to the campaign treasurer in such a manner so as to clearly identify the provider.

The election code imposes no requirement of possession prior to the formation of the general intent to contribute. However, specific intent to do so must preclude the actual contribution and it must be promptly reported. Something cannot be provided to a campaign with an expectation of payment and later be considered an in-kind contribution.

The payment by another person as contained in your question constitutes a contribution of something of value by that person. In actuality the person is paying for the meal and in turn contributing the meal to your campaign. In so doing it is an in-kind contribution totaling the value of your meal, plus those of any others accompanying you, provided the contributor paid for those as well. You should take care that your campaign treasurer is promptly notified of the contribution, the contributor, the amount, and for what purpose. In-kind contributions are subject to the limitations in s. 106.08, F.S.

Accordingly, based on the foregoing discussion, you may accept as contributions in-kind the payment of the cost of certain meals and receptions, which are campaign-related.

SUMMARY

The cost of campaign-related meals, receptions, and other functions may be paid by someone other than the treasurer as an in-kind contribution to the campaign. The campaign treasurer must be promptly notified of the contribution and report it in the next campaign treasurer's report. An in-kind contribution is subject to the total contribution limitations of s. 106.08, F.S.