

DE 78-33 - August 14, 1978

**Campaign Contributions; Limitations; State-Wide Issue Political Committees.
Art. XI, s. 2, Fla. Const.; s. 106.08, F.S.**

To: Arthur E. Teele, Jr., Attorney at Law, P.O. Box 1877, Tallahassee, Florida 32302

Prepared by: Division of Elections

Pursuant to your letter of August 1, 1978, an opinion of this office was requested in answer to substantially the following question:

Is the limitation on contributions to a political committee supporting or opposing a statewide issue in s. 106.08(1)(d) applicable to a committee supporting or opposing a proposal of the Constitution Revision Commission?

Your question is answered in the negative.

The legislature adopted a comprehensive statutory plan for placing limitations on the amounts of contributions to candidates and political committees. That portion pertinent to your question states:

"No person or political committee shall make contributions to any. . .political committee in this state, for any election, in excess of the following amounts:

(d) To any political committee in support of, or in opposition to, an issue to be voted on in a statewide election, \$3,000." s. 106.08(1), F.S.

The proposals to which you refer will appear on the November 7, 1978 general election ballot throughout the state. They were formulated and submitted for a vote by the Constitution Revision Commission pursuant to Art. XI, s. 2, Fla. Const. Thus, the eight proposed revisions on the November ballot are issues "to be voted on in a statewide election" within the meaning of s. 106.08(1)(d), F.S.

However, a recent federal court decision found the contribution limitation in that statute to be unconstitutional. Let's Help Florida v. Smathers, TCA 78-0750 (N.D. Fla. May 18, 1978). The challenge there was brought by a political committee supporting a constitutional initiative issue.

In an opinion by Judge William Stafford, the court found:

"There has been nothing presented. . .which would indicate that in the context of a referendum a contribution ceiling would not have a limiting effect on the quantity of speech. ..." Id., slip opinion, p. 13.

The court further stated that the rights of association and speech are so "inextricably interwoven as to

be virtually inseparable." Id., p.14. The contribution limitation had the effect of rendering the right of association ineffective by its impact in literally eliminating access to large expensive mass media. Id.

In applying the strict scrutiny test to the statute, the court found that no compelling state interest was shown to justify the law's limitation. While the Supreme Court in Buckley v. Valeo, 424 U.S. 1 (1976), upheld limits on contributions to candidates as a means of eliminating public corruption, the district court concluded:

"It is therefore clear that in the context of an issue campaign and election, if there is to be one, the threat of corruption is minimal at best and is not sufficiently compelling to sustain this ceiling on contributions. . . ." Id., p.18. See First National Bank v. Bellotti, U.S. , 98 S.Ct. 1407, 55 L.Ed. 2d 707 (1978).

The district court opinion goes on to comment on the adverse effect of the statutory limitations on an initiative campaign. Despite this commentary, the reasoning and conclusion of the court does not appear so intertwined with the initiative process as to distinguish it from all other issue committees.

This office sees no real distinction between the plaintiff in this case, an initiative committee, and the type of committee described in your letter which will support or oppose a revision proposed by the commission appearing on the statewide November ballot. Accordingly, the court decision referenced above seems clearly applicable to any committee supporting or opposing a statewide ballot issue, whatever its origin. The result is that any such political committee may accept contributions in excess of the \$3,000 limitation in s. 106.08(1)(d), F.S.

It should be noted that this court decision is currently on appeal to the Fifth Circuit Court of Appeals. Let's Help Florida v. Smathers, Case No. 78-2497 (5th Cir.). This advisory opinion is obviously contingent on the outcome of that appeal. Until such time as an appellate court reverses the district court, the enforcement of the limitation of s. 106.08(1)(d), F.S. is enjoined.

SUMMARY

The limitation on contributions to a political committee supporting or opposing a statewide issue has been found unconstitutional by a federal district court, and enforcement thereof, enjoined. A political committee supporting or opposing a proposal of the Constitutional Revision Commission appearing on the November, 1978 general election ballot, may accept contributions in excess of the \$3,000 limit of s. 106.08(1)(d), F.S.