

DE 78-35 - August 17,1978

**Political Committees; Contributions; Affiliated Organizations
ss. 106.011, 106.04,106.07, 106.08, F.S.**

To: J. Kenneth Ballinger, Legislative Counsel, Florida Relators Political Action Committee, P.O. Box 988, Tallahassee, Florida 32302

Prepared by: Division of Elections

Your letter requests an advisory opinion of this office regarding the application of the Florida Election Code to a certain committee of continuous existence. The questions posed in your letter address the relationship between local boards of realtors, the Florida Association of Realtors, and the Realtors Political Action Committee of Florida (RPAC-Florida).

The questions to be answered are as follows:

1. "May funds paid to RPAC-Florida by a corporation (e.g. Smith Realty Company, a corporation) be donated to candidates for state and local office?"
2. "If funds collected by Smith Realty Company are given specifically by an individual to the company as a political contribution to be paid to RPAC-Florida, a committee of continuous existence, may such funds be used as political contributions?"
3. "May the Tallahassee Board of Realtors, as an example, send some of its money derived solely from membership dues to RPAC-Florida to be used as political contributions to local or state candidates?"
4. "May a group of realtors and their associates form a political committee for purposes of raising money and financially supporting candidates for public office, or must such a group qualify as a committee of continuous existence?"

Question 1.

Florida law places no prohibition upon contributions to candidates or political committees by corporations, domestic or foreign. A corporation giving to a candidate or committee is a contributor just as an individual would be. It is subject to the contribution limitations of s. 106.08(1), F.S., and its contribution must be reported by the recipient of the campaign treasurer's report, s. 106.07(4), F.S.

A corporation utilizing funds from the corporate treasury for political contributions need not establish a separate, segregated political committee fund. s. 106.011(1), F.S. Only in the event solicitations are made by the corporation for funds to be given to candidates must it establish a political committee. Id.

The prohibition on corporate giving to candidates is found in the federal campaign financing law. National banks and corporations chartered by Congress are prohibited from contributing to any candidate for any public office. 2 U.S.C. 441b. (National banks may make loans to candidates if done

in the normal course of business). Candidates for federal office may not accept contributions from any corporation. Id.

Funds contributed to a political committee or a committee of continuous existence may, after deposit in the committee's campaign account, be contributed to candidates for state or local elective office. However, such funds may not be "earmarked" by the original contributor to any particular candidate. To do so would constitute an indirect contribution or giving "in the name of another," which is expressly forbidden, s. 106.08(3), F.S.

It should be noted that the "earmarking" of contributions is permitted under the federal act. 2 U.S.C. 441a(a)(8). This process is defined in the rules of the Federal Election Commission as follows:

"... earmarked means a designation, instruction, or encumbrance (including those which are direct or indirect, express or implied, oral or written) which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate. . . ." 11 C.F.R. 110.6(b).

To do as is described there is a violation of Florida law if done with regard to candidates for any non-federal office in this state.

Question 2.

If a corporation solicits or receives political contributions for anyone, including officers, employees, or stockholders, it loses the exemption of s. 106.011(1), F.S., and must therefore register as a political committee. Money given to a corporation for the purpose of being retained by that corporation, deposited in the corporate treasury, and then forwarded to any political committee, causes the corporation to need be registered as a political committee.

Should the money be given to a corporation to be conveyed to a political committee or committee of continuous existence without being deposited in the corporate treasury, the corporation is merely serving as a delivery agent. The funds never become those of the corporation, as it was simply holding the committee contribution until transmittal to the committee's account. The contribution is being made directly from the person contributing the money to the recipient committee.

A violation of the election law occurs if the money is given to the corporation, deposited in its treasury with instructions that the amount given be contributed to a particular committee, and then subsequently be so contributed. This would constitute a contribution given in the name of another, i.e., an "earmarked" contribution, as discussed previously.

Accordingly, subject to the considerations noted above, your second question is answered in the affirmative, provided there is no "earmarking" of contributions.

Question 3.

Florida law places not restrictions on who may contribute to political campaigns or committees. If a local board of realtors has received money from whatever source and placed it in the board's depository, it may contribute from its treasury to a committee of continuous existence. The previous discussions of indirect earmarked contributions and political funds solicited by corporations are applicable.

Your third question is, subject to those considerations, answered in the affirmative.

Question 4.

Your final question asks if a group of realtors may form a political committee for the purpose of contributing to candidates, or must a committee of continuous existence be formed and registered.

In pertinent part, a political committee is defined as:

". . .a combination of two or more individuals, or a person other than an individual, the primary or incidental purpose of which is to support or oppose any candidate. . .and which accepts contributions or makes expenditures during a calendar year in excess of \$100." s. 106.011(1), F.S.

A committee of continuous existence is defined as:

". . .any group, organization, association, or other such entity which is certified pursuant to the provisions of s. 106.04."

That statute establishes the minimum standards which must be satisfied by a group seeking to be registered as a committee of continuous existence. It provides:

"In order to qualify as a committee of continuous existence. . ., a group, organization, association, or other such entity which in involved in making contributions to candidates shall meet the following criteria:

- a. It shall be organized and operated in accordance with a written charter or set of bylaws which contains procedures for the election of officers and directors and which clearly defines membership in the organization; and
- b. At least 25 percent of the income of such organization must be derived from dues or assessments payable on a regular basis by its membership pursuant to provisions contained in the charter or bylaws." s. 106.04(1), F.S.

Such a group of realtors may register as either type of committee and contribute to candidates. The decision as to which type of committee rests with the group comprising it. It should also be noted that membership in one committee or continuous existence (such as RPAC) does not preclude membership in another, or contributing to a political committee.

SUMMARY

Funds paid to a committee of continuous existence by a corporation may be contributed by that committee to candidates. Such corporate contributions to the committee may not be earmarked to any particular candidate. Money may not be given to a company or other person with the instruction that it be contributed by the recipient to a particular candidate. A group desiring to raise funds to be contributed to candidates has the option of registering as either a political committee or committee of continuous existence, if it meets the required qualifications.