

DE 78-41 - October 10, 1978

**Contributions; Political Committees; Limitations; In-Kind Contributions.
ss. 106.011, 106.021, 106.04, 106.055, 106.08, F.S. (1977).**

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Prepared by: Division of Elections

You have requested an advisory opinion of this office with respect to the following questions:

1. May a committee of continuous existence certified as such pursuant to Section 106.04, Florida Statutes, donate funds directly to an issue-oriented political committee such as No Casinos, Inc.?
2. If such contributions are allowed, is there any limitation on the amount which may be contributed to such an issue-oriented committee?
3. May an individual or business entity use, or allow the use of, a telephone credit card on behalf of a political committee and then report all charges on said credit card as "in-kind" contributions to that political committee?"

Section 106.011 (3)(a) and (b), F.S.(1977) states that the term contribution means:

"(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."

Therefore, a contribution by a committee of continuous existence to a political committee is clearly contemplated and authorized by Chapter 106. Section 106.021, F.S. (1977), requires each political committee to appoint a campaign treasurer, and subsection (3) thereof provides that no contribution or expenditure shall be directly or indirectly made or received on behalf of any political committee except through the duly appointed campaign treasurer. Thus, in answer to your first question, a committee of continuous existence may make a contribution to a political committee.

Section 106.04(5), F.S. (1977), states: "No committee of continuous existence shall contribute to any candidate or political committee (an amount) in excess of the limits contained in s. 106.08(1)"
Section 106.08(1), F.S. (1977), contains the following limitations with respect to political committees:

"(1) No person or political committee shall make contributions to any candidate or 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.

As explained in DE 78-33 (August 14, 1978), the applicability of the limitation contained in paragraph (d) of s. 106.08(1), F.S. (1977) is in question. The limitation therein was declared to be unconstitutional by the U.S. District Court for the Northern District of Florida in the case of Let's Help Florida v. Smathers, TCA 78-0750 (N.D. Fla. May 18, 1978). The Court has permanently enjoined the enforcement of the limitation contained in that paragraph. In that case, the plaintiff was a political committee sponsoring a constitutional amendment by initiative, however the decision appears clearly applicable to any political committee supporting or opposing a statewide issue, (see DE 78-33, p. 2). Therefore, a political committee involved in supporting or opposing a statewide issue may accept, and a committee of continuous existence may make, contributions in excess of \$3,000. The decision in Let's Help Florida has been appealed to the Fifth Circuit, however the injunction currently precludes enforcement.

In light of the decision in Let's Help Florida, the viability of the limitation in paragraph (3) of s. 106.08(1), F.S. (1977), as it restricts contributions to political committees which are dealing with issues on less than a statewide basis could also be in question. However, the court's order in the Let's Help Florida case was specifically directed only to s. 106.08(1)(d), F.S. (1977), and therefore the restriction on less than statewide issue elections should continue to be followed until it is judicially construed otherwise or legislatively changed.

One other portion of s. 106.04(5), F.S. (1977) is of importance and should also be noted. The last sentence of this subsection, concerning committees of continuous existence, states: "No such committee shall make expenditures in support of, or in opposition to, an issue unless such committee first registers as a political committee pursuant to this chapter and undertakes all the practices and procedures required thereof." Therefore, although such a committee may make a contribution to an issue-oriented political committee it may not make an expenditure itself with respect to supporting or opposing an issue, unless it registers as a political committee as provided in s. 106.03, F.S. (1977).

Section 106.011(3), F.S. (1977), which defines the term contribution, and which has been previously mentioned, provides that contributions in-kind are contributions and are to be so reported. Section 106.055, F.S. (1977) states: "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."

Thus, with respect to your third question, the use of a telephone credit card, and the charges placed thereon for the benefit of the political committee, should be reported as an in-kind contribution to the committee by the persons or business entity possessing the charge account. Obviously, to be within the requirements of s. 106.055 the actual charges incurred should be ascertained and reported as the value of such contribution.

SUMMARY

A committee of continuous existence may make contributions to issue-oriented committees. Due to the decision in the case of Let's Help Florida v. Smathers, the \$3,000 limitation contained in s. 106.08 (1)(d) with respect to contributions to political committees supporting or opposing statewide issues has presently been rendered unenforceable. The use of a telephone credit card by a person or business entity on behalf of a political committee may be reported as an in-kind contribution to such committee, however the actual charges should be ascertained and reported as the amount of such contribution.