

DE 78-42 - October 19, 1978

**Contributions; Political Committees; Campaign Depositories
ss. 106.011, 106.021, 106.07, 106.08, F.S. (1977)**

To: Theodore L. Tripp, Jr., Tobias Simon, P.A., 1492 South Miami Avenue, Miami, Florida 33130

Prepared by: Division of Elections

This is in response to your letter requesting an advisory opinion in answer to substantially the following questions:

1. May one political committee make a contribution to another political committee?
2. Does such an act as described in question 1, constitute making a contribution in violation of s. 106.08(3), F.S., which prohibits making "a contribution in support or opposition to...an issue through or in the name of another directly or indirectly, in any election?"
3. Must political committees, which are supporting or opposing the same statewide issue, maintain separate campaign depositories?

Section 106.011(3), F.S. (1977), defines the term "contribution" for the purposes of Chapter 106 and includes the following act within the meaning of that term:

"(b) A transfer of funds between political committees. . ."

Section 106.021(1), F.S. (1977), requires each political committee to appoint a campaign treasurer and to designate a primary campaign depository. The only exception to these requirements is for those political committees which deposit all contributions in a national depository for subsequent distribution. See s. 106.021(1)(d), F.S. (1977). All contributions received and expenditures made by a political committee are through the committee's duly appointed campaign treasurer, s. 106.021(3), F.S.

The making of contributions to one political committee from another such committee seems clearly contemplated by the election law. The definition of "contribution" includes "A transfer of funds between political committees. . . ." s. 106.011(3)(b), F.S. Furthermore, the statute prescribing limitations on the amount which may be contributed provides:

"No person or political committee shall make contributions to any candidate or political committee in this state, for any election, in excess of . . ." s. 106.08(1), F.S.

Therefore, in answer to your first question, contributions by one political committee to another political committee are permissible, provided they are made through the campaign treasurer and deposited in the receiving committee's primary depository campaign account. Except for political committees supporting or opposing statewide issues, the contribution limitations of s. 106.08(1), F.S., are applicable. It should be noted that an opinion of this office (DE 76-31, October 5, 1976),

previously determined that such contributions between committees of continuous existence were appropriate.

Section 106.08(3), F.S. (1977) states in part:

"(3) No person shall make any contribution. . . in support of or opposition to an issue, or to any political committee, through or in the name of another, directly or indirectly in any election."

Your second question inquires as to whether a contribution from one political committee to another constitutes a contribution given, directly or indirectly, through or in the name of another as prohibited by s. 106.08(3), F.S. This statute is intended to prevent the use of conduits or earmarked contributions in this state. All contributions must be made directly to the recipient committee (or candidate) and may not be forwarded through the account of some third party. (See DE 78-37, August 21, 1978). The delivery of a contribution by a third party is not prohibited provided the contribution is directly made and no commingling of funds occurs such that the contribution comes from some third account prior to deposit in the receiving committee's campaign account. See DE 78-40 (October 5, 1978).

Federal campaign finance laws do permit conduits and earmarking of contributions. Specific language is included there to authorize such handling of contributions:

"all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate." 2 U.S.C. s. 441a(b).

The Federal Election Commission has by rule defined "earmarked" as meaning "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). Such provisions are not found in Florida law, and, as a result of such absence, must be considered as indicating the legislature's desire to not authorize such earmarked contributions.

A contribution from one political committee to another political committee as discussed in question 1 with respect to an issue does not constitute a prohibited act under s. 106.08(3), F.S. In that earmarking is not permitted in Florida, a political committee exercises complete direction and control over the funds in its possession. A contribution to a political committee which is earmarked, i.e., clearly understood by the contributor and the first recipient committee to be in turn contributed by that committee to a specified second committee, is not authorized under Florida law and would constitute an indirect contribution given in the name of another s. 106.08(3), F.S. However, in the absence of such earmarking, your second question is answered in the negative.

As previously stated, each political committee is required to designate a primary depository. This campaign account of the political committee is required by law to "be separate from any personal or other account..." s. 106.11(1), F.S. Thus, the commingling of funds of different political committees is

prohibited by Florida law. This is not to say in light of the discussion above in answer to question 1 that a committee may not contribute to another, but rather that two or more political committees may not jointly use the same account for depositing contributions and making expenditures. Accordingly, your third question is answered in the affirmative.

SUMMARY

A political committee may make a contribution to another political committee, and may do so even if both are supporting or opposing the same candidate or issue. In the absence of prohibited earmarking, such contributions do not constitute making an indirect contribution in the name of another. Each political committee is required to designate a separate primary depository and its funds cannot be commingled with those of any other political committee, candidate, or person.