

DE 81-06 - November 19, 1981

Committee Chapter 81-312, Section 1, Laws Of Florida: Section 106.011(1), F.S.

To: Ms. Barbara A. Forsythe, City Clerk, City of Lake Worth, 7 North Dixie Highway, Lake Worth, Florida 33460

Prepared by: Division of Elections

This is in response to your request for an opinion on essentially the following question:

Does a committee circulating a petition for recall of a municipal official come within the purview of a political committee?

As you are aware, a recall election is a procedure by which an elective official may be removed by a vote of the people by a specified number of citizens. 63 Am Jur 2d, Public Officers and Employees Section 238. A recall election is a special, extraordinary and unusual proceeding, where the people may remove an official who is not giving satisfaction, and can only be held when the statutory authority has been granted. State ex rel. Landis v. Tedder, 106 Fla. 140, 143 So. 14 (1932); 63 Am Jur 2d, Public Officers and Employees Section 238.

A proceeding for the Recall of Public Officers is initiated by the execution of a petition by a specified number or percentage of electors. Section 100.361(1)(a), F.S. Recall proceedings are in derogation of statutory tenure of the office prescribed for the officer sought to be removed, so that statutory provisions regarding them must "be substantially pursued, or the proceedings will be held invalid and subject to be enjoined. State ex rel. Landis v. Tedder, supra. Thus, the recall is an extraordinary proceeding to remove a public official already in office because of some alleged malfeasance, misfeasance or other act enumerated in Section 100.361(1)(b), F.S. (1979).

The 1981 Legislature in Chapter 81-312, Section 1, Laws of Florida amended Section 100.361(1)(a)6., Florida Statutes, which provides:

" .. Electors of the municipality making charges contained in the 'Statement of grounds for Recall' and those signing the recall petition shall be designated as the 'Committee.' A specific person shall be designated therein as chairman of the committee to act for the committee...."

Therefore, the legislature has statutorily designated when a group becomes a petition "committee" (petition committee) the primary purpose of the committee being to solicit the requisite number of signatures to conduct a recall election of an elected official.

Section 100.361(7), Florida Statutes (1979), in pertinent parts states:

"... No expenditures for campaigning for or against an officer being recalled shall be made until

the date on which the recall election is to be held is publicly announced. The committee and the officer being recalled shall be subject to Chapter 106. . ."

The above section prohibits expenditures prior to the announced recall election but not the receipt of contributions. Further, the "committee" and the officer being recalled are subjected to the provisions of the campaign financing law, Chapter 106, F.S. Therefore, a petition committee accepting contributions during a calendar year, in excess of the aggregate amount of \$100.00, before the announcement date for the recall election is required to register pursuant to Section 106.03, F.S. Similarly, persons, groups or organizations accepting contributions on behalf of the officer being recalled are required to register as a political committee when the statutory limitation in Section 106.011, Florida Statutes has been exceeded. Once the date of the recall election is publicly announced, campaign contributions and expenditures of the petition committee and the officer being recalled must be in compliance with Chapter 106, F.S.

Your question is answered accordingly.

SUMMARY

A petition committee that accepts contributions during a calendar year in an aggregate amount in excess of \$100.00 before the date the recall election is publicly announced becomes a political committee and is required to register as provided in Section 106.03, F.S. Similarly, persons, groups or organizations accepting contributions on behalf of the person to be recalled must also register as a political committee when the required aggregate amount has been reached. The petition committee and the person to be recalled must comply with Chapter 106, F.S., following the announcement of the date the recall election will be held.