

DE 82-1 January 25, 1982

**LEGAL EXPENSE FUND COMMITTEE, s. 10;0.361, F.S.
MUNICIPAL RECALL: CAMPAIGN FINANCING ACT, CHAPTER 106, F.S.**

To: Mr. Random R. Burnett. Post Office Box 5488, Daytona Beach, Florida 32018

Prepared by: Division of Elections

You have requested an opinion of this office in answer to the following question:

Whether a committee formed to contribute money to a fund to defray the cost of legal fees and court costs incurred by two city council members who are currently the subject of the recall petition are governed by Chapter 106, Florida Statutes?

Your letter indicates that in the City of Daytona Beach Shores, Volusia County, Florida, a committee has been formed under Section 100.361, F.S. (1981), which has initiated a recall petition directed against two city council members. You further stated that the petition is presently being litigated in the Circuit Court for Volusia County regarding the sufficiency of the allegations in the Statement of Grounds for Recall.

It is my understanding that a second committee has been formed of citizens of the City of Daytona Beach Shores who intend to contribute money to a fund to defray the attorney fees and court costs incurred by the Council members in the litigation. You have advised that contributions made to the legal expense fund should be entirely utilized for attorneys fees and litigation costs; no portion of the funds would be applied to any advertising or any other expenditure designed to marshal public opinion.

Because litigation has been filed, it would be inappropriate for me to make any comment regarding the petition for recall or associated subjects. However, your question raises an issue regarding coverage of the Campaign Financing Act, Chapter 106, Florida Statutes, which this office is authorized by Section 106.23(2), Florida Statutes, to give an advisory opinion.

Restrictions on expenditures during a recall proceeding are found in Section 106.361(7), Florida Statutes, which provides: "No expenditures for campaigning for or against an officer being recalled shall be made until the date on which the recall election to be held is publicly announced". This section relates directly to expenditures to marshal public opinion either for or against a public official and does not appear to be applicable in this instance.

The intent of the Campaign Financing Law, Chapter 106, Florida Statutes, is to insure funds used for influencing the public either for or against an officeholder, candidate or issue are properly accounted for and disbursed. It has been held that public funds cannot be used to pay for the legal fees of a public official recalled. William v. City of Miami, 42 So. 2d 582 (Fla. 1949); accord: Attorney General Opinions 080-75, 071-

185 and Informal Opinion to Nicholas A. Caputo, February 27, 1975. This holding and conclusions were based on the rationale that a recall election is a personal matter between electors and the officer whose recall is being sought; consequently, no public purpose exists for which public funds may be expended.

Because public funds cannot be used for challenging a recall petition, and because the public official being recalled is responsible for challenging the sufficiency of any recall petition, and until this area is legislatively clarified, I am of the view that a group of citizens desirous of assisting a public official in defraying the cost of legal expenses are not prohibited from doing so, provided such funds are used for legal expenses only and no part of the funds will be used for campaigning or influencing the electorate toward the position of the person or persons named in the petition(s). Thus, a committee formed to contribute money to defray cost of legal expenses in a recall proceeding would not be subject to Chapter 106, Florida Statutes.

The funds contributed for payment of legal fees in this instance are not subject to any mandatory accounting procedure. Therefore, it is recommended that some method of accounting for funds received and expended be established for any audit or justification that may be required.

Your question is answered accordingly.

SUMMARY

A committee formed to contribute money to defray the cost of legal expenses incurred by officeholders who are undergoing a recall proceeding are not subject to Chapter 106, Florida Statutes, provided such funds are used for legal expenses only and no part of the funds will be used for campaigning or influencing the electorate in favor of the person or persons named in the petition(s). It is recommended that some method of accounting for funds received and expended be established for any audit or justification that may be required.