

DE 89-07 - August 17, 1989

**Executive Committees
Section 103.121 (5)(A), (B), F.S.**

*To: Honorable Jack Gordon, The Florida Senate, Majority Office, 205 Senate Office Building,
Tallahassee, Florida 32399-1100*

Prepared by: Division of Elections

This is in response to your request for an advisory opinion. The Division has authority under Section 106.23(2), Florida Statutes, to issue this opinion. You asked the following question:

Whether Section 103.121(5)(b), Florida Statutes, prohibition against state executive committees endorsing candidates would also prohibit a separately constituted body from making recommendations to the voters through a party convention.

Section 103.121(5)(a) and (b), Florida Statutes, provides that any state or county executive committee which endorses or intends to endorse, certify, screen or otherwise recommend one or more candidates for nomination shall forfeit all party assessments which would be returned to these committees.

In Kay v. Smith, (Fla. 2d Cir. Ct. 1988), the court determined that in enacting Section 103.121(5), Florida Statutes, the legislature was concerned with fairness to candidates. The court stated that the legislature was attempting to address the situation where a county or state executive committee throws its weight behind one or more of its candidates for nomination to the exclusion of other candidates contending for the same nomination. The court emphasized the unfairness of requiring the unendorsed candidates to contribute money to an entity supporting a rival contender.

It is our opinion that the prohibition against endorsing candidates in this statute applies not only to state and county executive committees, but would also apply to the endorsement of candidates by a separate body which is, in fact, the alter ego of the executive committee. In order to maintain the fairness aspect emphasized in Kay v. Smith, a political party cannot do by convention that which it is prohibited from doing as a political party. Certainly anyone would assume that statements by a Democratic Convention would be the same as an official pronouncement from the Democratic Party.

SUMMARY

Under the auspices of a state political party a separately constituted state political party convention would appear to be an alter ego of the state political party. Therefore, the convention would be prohibited from endorsing candidates under Section 103.121(5)(b), Florida Statutes, unless the state political party is willing to forego party assessments generated from qualifying fees.