

DE 90-43 - November 28, 1990

Recall Elections
Section 100.361, F.S.

To: Honorable Judy Anderson, Supervisor of Elections, Charlotte County, Post Office Box 1112, Punta Gorda, Florida 33951

Prepared by: Division of Elections

This is in reference to your request for an advisory opinion on recall elections. You are the Supervisor of Elections for Charlotte County, and the Division of Elections has authority under Section 106.23(2), Florida Statutes, to issue an advisory opinion to you relating to the Florida Election Code, Chapters 97-106, Florida Statutes.

You ask:

Are individuals or committees involved in a recall election subject to a \$1,000 contribution limitation per election?

Section 100.361, Florida Statutes, provides recall procedures for municipalities and charter counties. There are no specific campaign financing provisions in this section governing spending and contributions for recall elections, although Section 100.361(7), Florida Statutes, states that the "committee and the officer being recalled shall be subject to Chapter 106."

Section 106.011(7), Florida Statutes, defines issue as, inter alia, any resolution of any political subdivision of this state to be submitted to the electors for their approval or rejection at an election. Therefore, a recall election is an issue election.

Some vacancies created by recall elections are filled at the same election as the recall. The election code provides that vacancies are filled in the following manner:

1. When an election is held for the recall of members elected only at-large, the candidates to succeed them for the unexpired terms are voted on at the same election. Section 100.361(4)(a), Fla. Stat.
2. When an election is held for the recall of members elected only from districts, the vacancy is filled by a special election to be held not less than 30 days or more than 60 days after the recall election. Section 100.361(4)(b), Fla. Stat.
3. When an election is held for the recall of members elected both at-large and from districts, the vacancies are filled by a special election to be held not less than 30 days or more than 60 days after the recall election. Section 100.361(4)(c), Fla. Stat.

However, when only one member is voted to be removed from office in a recall election whether elected from districts or whether elected from both at large and from districts, the vacancy is filled by the governing body according to the provisions of the appropriate law for filling vacancies. Section 100.361(4)(d), Fla. Stat.

Thus, when the recall election is held for the recall of members elected only at large, the election is both an issue election and a candidate election. When the election is held for the recall of members from districts or elected from both at large and from districts, the recall election is an issue election and the subsequent special election is a candidate election.

There are no limits on the amount which an individual may contribute to support or oppose an issue. See Buckley v. Valeo, 424 U.S. 1 (1976) and Let's Help Florida v. McCrary, 621 F.2d 195 (5th Cir. 1980). Citing the United States Supreme Court in Buckley v. Valeo, the court in McCrary held that the Florida Statute limiting the amount which an individual could contribute to a political committee organized to support or oppose an issue infringed upon the First Amendment right of political expression. The state contended that the interest in preventing corruption of candidates and the need to promote adequate disclosure of campaign financing were substantial government interests which justified limiting political contributions. The court rejected these reasons stating that corruption of candidates was not applicable to issue elections. Furthermore, Florida effectively promoted disclosure of large contributions through other statutes.

Therefore, in answer to your question, whether individuals or committees involved in a recall election must abide by limitations on contributions depends upon the purpose of the contribution. Individuals or committees supporting only the recall of an officer are supporting an issue, and are not subject to the \$1,000 contribution limitation in Section 106.08, Florida Statutes. However, individuals or committees supporting the recall of an officer and at the same time the election of particular candidate to fill the vacancy are subject to the \$1,000 contribution limitation.

SUMMARY

Individuals or committees supporting only the recall of an officer are not subject to the \$1,000 contribution limitation in Section 106.08, Florida Statutes. However, individuals or committees supporting the recall of an officer and at the same time the election of a particular candidate to fill the vacancy are subject to the \$1,000 limitation on contributions pursuant to Chapter 106.