

DE 94-13 - July 18, 1994

**Refunds of Excessive Contributions
Sections 106.011(4) and 106.34(1), F.S.**

TO: Ms. Sally S. Harrell, Campaign Manager, Jeb Bush for Governor, 1350 East Tennessee Street #C4, Tallahassee, Florida 32308

Prepared by: Division of Elections

This is in response to your request for an advisory opinion regarding refunds of excessive contributions. You are the campaign manager for the Jeb Bush for Governor Campaign. Therefore, pursuant to Section 106.23(2), Florida Statutes, the Division has authority to render this opinion to you.

According to your written request and subsequent telephone conversations with this office, the campaign has received and deposited contributions which exceed the limits prescribed by Chapter 106, Florida Statutes. Based on the foregoing, you ask:

Whether refunds of excessive contributions constitute expenditures for the purposes of the expenditure limits provided in the Florida Election Campaign Financing Act (Act), Sections 106.30-106.36, Florida Statutes.

The Act's overall expenditure limits are found at Section 106.34(1), Florida Statutes. Under this section expenditures for gubernatorial candidates and candidates for cabinet office are capped at 5 million dollars and 2 million dollars, respectively.

The foregoing provisions of the Act are a part of Florida's Campaign Finance laws found in Chapter 106, Florida Statutes.

Section 106.011(4), Florida Statutes, defines expenditure to mean:

[A] purchase, payment, distribution, loan, advance, transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit, or gift or money or anything of value made for the purpose of influencing the results of an election.... (Emphasis supplied.)

Thus, whether a refund of an excessive contribution constitutes an expenditure depends on whether it is made for the purpose of influencing the results of an election. There could be many instances where such is not the case.

For example, a bank or creditor could make an error in your favor and you would be required to return money from your campaign account or one could inadvertently receive an excessive contribution, deposit it, and have to refund all or a portion thereof, upon discovering the error. Under these

circumstances, a refund of an excessive contribution is not an expenditure for the purposes of Chapter 106, Florida Statutes, including those provisions related to public campaign finance. The expenditure is not being made to influence an election; rather, it is being made to correct a mistake.

While these transactions must be reported on the expenditure side of your campaign treasurer's report for disclosure purposes, they do not constitute expenditures as defined by Section 106.011(4), Florida Statutes; neither do such expenditures count as expenditures for the purposes of the Florida Election Campaign Financing Act. Since the Division uses special reporting forms for governor and cabinet races, you should code any refund of an excessive contribution as "SUR" (surplus) under "expense type," and "REPMNT" (repayment of Loans and Contributions) on Form DS-DE 93. To minimize any confusion or misinterpretation, we also recommend attaching a brief cover letter to your report alerting us to any refunds which are for the purpose of correcting errors or mistakes.

SUMMARY

A refund of an excessive contribution is not an expenditure for the purposes of Chapter 106, Florida Statutes, including those provisions related to public campaign finance. However, candidates should properly code such refunds on the expenditure side of their campaign treasurer's reports. We also recommend attaching a brief cover letter to your report alerting us to any refunds which are for the purpose of correcting errors or mistakes.