

**DE 94-16 - September 8, 1994**

**Matching Contributions**  
**Sections 106.08(1)(c); 106.08(2)(a); 106.33(3); 106.34; and 106.35(2), F.S.**

*TO: Mr. Kenneth Connor, Candidate for Governor, Post Office Box 11182, Tallahassee, Florida 32302*

*Prepared by: Division of Elections*

This is in reference to your request for an advisory opinion regarding the Florida Election Campaign Financing Act (Act). Sections 106.30-106.36, Fla. Stat. You are a candidate for Governor who is receiving contributions from the Election Campaign Financing Trust Fund; therefore, pursuant to Section 106.23(2), Florida Statutes, the Division of Elections has authority to issue this opinion to you.

You ask two questions:

- 1) Whether an individual, who has previously given \$250 to your campaign and had this entire amount matched with public funds, may also have subsequent contributions, given for the second primary, matched; and,
- 2) whether a participating candidate may make an immediate request for additional funds when a nonparticipating candidate exceeds the Act's expenditure limits and receive those funds within seven days of the request?

For reasons which follow, the answer to question one is no; the answer to question two is yes.

In answering your first question, we must determine whether the legislature intended each individual contribution of \$250 or less that is contributed during each election cycle, i.e., the first primary, second primary, and general election, to be matched with contributions from the Election Campaign Financing Trust Fund. Section 106.35(2)(b), Florida Statutes, defines what constitutes a matching contribution and places statutory limitations on such contributions. That section provides what contributions are allowable to be matched per individual:

Qualifying matching contributions are those of \$250 or less from an individual, made after September 1 of the calendar year prior to the election. Aggregate contributions from individuals in excess of \$250 will be matched only up to \$250. A contribution from an individual, if made by check, must be drawn on the personal bank account of the individual making the contribution, as opposed to any form of business account, regardless of whether the business account is for a corporation, partnership, sole proprietorship, trust, or other form of business arrangement. For contributions made by check from a personal joint account, the match shall only be for the individual who actually signs the check. (Emphasis added.)

The first sentence of this statutory provision sets forth three conditions precedent for a contribution to constitute a qualifying matching contribution. The first condition precedent is that the contribution must be \$250 or less; the second condition precedent is that the contribution must be from an individual; the third condition precedent is that the contribution must be made after September 1 of the calendar year prior to the election.

Following these three general conditions precedent, the legislature enacted the following specific limitations:

1. Aggregate contributions from individuals in excess of \$250 will be matched only up to \$250.
2. A contribution from an individual, if made by check, must be drawn on the personal bank account of the individual making the contribution, as opposed to any form of business account.
3. A match on a contribution from a joint account shall only be made for the individual who actually signed the check.

Based upon these unambiguous and specific statutory mandates, aggregate contributions from an individual are to be matched only up to \$250 for the entire period covering the first primary, second primary, and general election.

See, Adams v. Culver, 111 So. 2d 665, at 667 (Fla. 1959), wherein the Court stated:

It is a well settled rule of statutory construction, however, that a special statute covering a particular subject matter is controlling over a general statutory provision covering the same and other subjects in general terms. In this situation "the statute relating to the particular part of the general subject will operate as an exception to or qualification of the general terms of the more comprehensive statute to the extent only of the repugnancy, if any."

Moreover, even though the word "aggregate" is not defined in Section 106.35, Florida Statutes, it is well established that where words are not defined by the legislature, such words must be construed in their plain and ordinary sense. State v. Stewart, 374 So. 2d 1381, at 1383 (Fla. 1970).

The plain and ordinary meaning of "aggregate" is stated in Webster's Ninth New Collegiate Dictionary, 1983:

Formed by the collection of units or particles into a body, mass, or amount; COLLECTIVE, as ... taking all units as a whole. (Emphasis added.)

Similarly, Black's Law Dictionary, Revised Fourth Edition, 1968, defines "aggregate" to mean:

Entire number, sum, mass, or quantity of something; total amount; complete whole, and one provision under will may be the aggregate if there are no more units to fall into that class. In re Curley's Will, 151 Misc. 664, 272 N.Y.S. 489. Composed of several; consisting of many

persons united together; a combined whole. 1 Bl.Comm. 469. (Emphasis added.)

It is, therefore, the Division's opinion that the plain meaning of the provisions of Section 106.35(2)(b), Florida Statutes, providing that "aggregate contributions from individuals in excess of \$250 will be matched only up to \$250" is a limitation the legislature has placed on all contributions given by an individual during the first primary, second primary, and general election.

The Division's interpretation is bolstered by a law review article written by Chris Haughee, former Staff Director for the House Committee on Ethics and Elections and one of the primary authors of Florida's Campaign Finance Act:

Contribution limits to candidates for statewide office set in Section 106.08, Florida Statutes, are undisturbed by the FECFA, but for purposes of qualifying for matching state money, only the first \$250 of any individual contribution will be considered.<sup>60</sup> This restriction is consistent with other states which have limited matching funds.

---

60. Ch. 86-276, Section 1, 1986 Fla. Laws 2030 (to be codified at Fla. Stat. Section 106.33(2)). Though the contribution limit of \$3,000 per election (first primary, second primary, general election) allows an individual to contribute a total of \$9,000, the \$250 matching limit is a one-time match for all aggregate contributions and does not apply to each election .... (Emphasis added.)

Haughee, The Florida Election Campaign Financing Act: A Bold Approach to Public Financing of Elections, 14 Fla. St. U.L. Rev. 585, at 593 & n. 60 (1968).

Neither this statutory provision nor the expressed legislative intent therein changed when the legislature enacted Chapter 91-107, Laws of Florida.

Moreover, for purposes of Chapter 106, Florida Statutes, the Florida legislature has used the word "aggregate" several times. On each of these occasions, the term has been used to mean the entire sum total of contributions and expenditures, unless an expressed time limitation was otherwise legislatively prescribed. For example, in Section 106.08(2)(a), Florida Statutes, the legislature provided:

A candidate may not accept contributions from national, state, and county executive committees of a political party, which contributions in the aggregate exceed \$ 50,000, no more than \$25,000 of which may be accepted prior to the 28-day period immediately preceding the date of the general election. (Emphasis added.)

Consistently, the legislature provided in Section 106.33(3), Florida Statutes:

Limit loans or contributions from the candidate's personal funds to \$25,000 and contributions

from national, state, and county executive committees of a political party to \$25,000 in the aggregate, which loans or contributions shall not qualify for meeting the threshold amounts in subsection (2). (Emphasis added.)

More importantly, when the legislature wanted contribution limitations to be included in each election cycle, it expressly said so. For example, in Section 106.08(1)(c), Florida Statutes:

For purposes of this subsection, the first primary, second primary, and general election shall be deemed separate elections so long as the candidate is not an unopposed candidate as defined in s. 106.011(15) .... (Emphasis added.)

Therefore, had the legislature in Section 106.35(2)(b), Florida Statutes, wanted to expand the term "aggregate" to apply to those contributions received by a candidate in each election cycle as it did in Section 106.08, Florida Statutes, it would have expressly done so. It did not. It is well established that the legislature is presumed to have expressed its intent by using the words found in the statute. Thayer v. State, 335 So. 2d 815 (Fla. 1976).

That the legislature intended "aggregate" in Section 106.35(2)(b), Florida Statutes, to be the sum total of all contributions given by an individual to a candidate during the first primary, second primary, and general election as opposed to each election cycle as set forth in Section 106.08, Florida Statutes, is further evidenced by the legislature's subsequent ratification of the Division's interpretation and application of this statutory provision over the past seven years as well as the legislative history.

The original Act is embodied in Chapter 86-276, Laws of Florida, House Bill 1194, which took effect January 1, 1987. Both the fiscal note prepared by the House Committee on Appropriations and the staff analysis prepared by the House Committee on Ethics and Elections state that "public funds will be available on a dollar for dollar basis up to the \$250 limit ...." See, Sections 20 and 22, Ch. 91-107, Laws of Florida. (The first two sentences of paragraph (b), Section 106.35(2), Florida Statutes, formerly appeared at Section 106.33, Florida Statutes, 1990 supplement, and have been a part of the Act since the adoption of Ch. 86-276, Laws of Florida.)

Likewise, during the past seven years the Division has consistently interpreted and applied the \$250 limit on a per individual basis. That is, once an individual's first \$250 was matched, further contributions would no longer be matchable even if an additional \$250 was contributed by the individual during the second primary or the general election.

For example, on July 12, 1988 the Division stated that "aggregate contributions from individuals in excess of \$250 will only be matched up to \$250." Memorandum from Phyllis Slater to Dot Joyce with copies to Betty Easley, Ken Rouse, et al., July 12, 1988. Later, in 1990, the Ron Howard Campaign asked if its understanding that only the first \$250 of an individual's campaign was matchable was correct. The Division responded by stating that "only \$250 of contributions by individuals are eligible for matching." Letter from Phyllis Slater to Joseph D'Ettore, Jr., June 11, 1990.

Additionally, written statements of the House Ethics and Elections Subcommittee Chairman,

Representative George Crady, provide, in pertinent part:

The matching formula is based on current law. Current law matches the first \$250 of the total contributions of any individual. No contribution from an entity other than an individual qualifies for matching funds. PAC, corporate and party contributions are not matched. (Emphasis added.)

It also is well settled that the statement of a sponsoring legislator is evidence to clarify what the legislature intended particular statutory provisions to mean. Lloyd v. Farkash, 476 So. 2d 305 (Fla. 5th DCA 1985).

Further, where, as here, legislative sessions have occurred after an agency's interpretation and application of a statutory provision without any legislative action taking issue with the agency's interpretation of the particular meaning of a word, the agency's interpretation is highly persuasive as to the proper meaning of a term. See, Kirk v. Western Contracting Corporation, 216 So. 2d 503 (Fla. 1st DCA 1969).

Finally, support for the Division's opinion is found in the general rule regarding the language of legislation granting administrative agencies the power to disburse public funds. Such power must be strictly construed and cannot be taken by implication. See, Sutherland Statutory Construction, Section 65.02 (5th Ed. 1992); Ops. Att'y Gen. Fla. 85-4 (1985) and 77-8 (1977). Cf., Florida Development Commission v. Dickenson, 229 So. 2d 6 (Fla. 1st DCA 1969), cert. denied, 237 So. 2d 530 (Fla. 1970).

Thus, based upon the above authorities, it is unequivocal that only the first \$250 contribution from an individual is statutorily prescribed to be matched, even if contributions in excess of \$250 are contributed in each of the first primary, second primary, and general elections.

As to your second question, Section 106.355, Florida Statutes, provides, in pertinent part, that when a nonparticipating candidate exceeds the expenditure limits provided in Section 106.34, Florida Statutes:

The Department of State shall, within 7 days of a request by a participating candidate, provide such candidate with funds ... equal to the amount by which the nonparticipating candidate exceeded the expenditure limit ....

Accordingly, based on this statutory directive, once a nonparticipating candidate has, in fact, exceeded the expenditure limits provided in Section 106.34, Florida Statutes, a participating opposing candidate may make a request for additional funds. Within seven days of such request, the Department is statutorily required to provide the eligible candidate with funds equal to the amount by which the nonparticipating candidate exceeded the expenditure limit, not to exceed twice the amount of the maximum expenditure limit prescribed for such candidate under the Act.

## SUMMARY

Only the first \$250 contribution from an individual is statutorily prescribed to be matched with

qualified matching funds, even if contributions in excess of \$250 are contributed by such individual in the first primary, second primary, and general elections. If a nonparticipating candidate exceeds the expenditure limits imposed by the Act, all participating opposing candidates may make an immediate request for funds. Within seven days of such request, the Department is required to provide such candidates with funds equal to the amount by which the nonparticipating candidate exceeded the expenditure limit, not to exceed twice the amount of the maximum expenditure limits prescribed for such candidates under the Act.