RESCINDED

DE 96-03 - November 4, 1996

Public Campaign Finance

§§ 99.092(1), 99.093(1), 105.031(3), 106.04(8)(a), 106.07(8)(a), 106.23, 106.25, 106.30-106.36, 215.32(2)(b), 215.3206, 215.3208, Fla. Stat. (1995), Art III, § 19(f), Fla. Const., Art. VII, § 1(c), Fla. Const.

TO: Mr. Al Hoffman, Citizens For Campaign & Government Spending Reform, 2020 Clubhouse Drive, Sun City Center, Florida 33573

Prepared by: Division of Elections

This is in response to your request for an advisory opinion regarding the Florida Election Campaign Financing Act, sections 106.30-106.36, Florida Statutes ("FECFA"). You are the head of a political committee that has been circulating an initiative petition proposing an amendment to the Florida Constitution that would eliminate public campaign financing. During the 1996 legislative session, the Florida Legislature failed to re-create the Election Campaign Financing Trust Fund, § 106.32(1), Fla. Stat., ("ECF Trust Fund"). The ECF Trust Fund, which is the sole source of financing for the FECFA, will terminate on November, 4, 1996, and the practical effect of the initiative petition you have been circulating is now in doubt. Therefore, the Division of Elections has authority to render this opinion to you. § 106.23, Fla. Stat.

In light of the Legislature's failure to re-create the Trust Fund, and the Trust Fund's impending termination, you ask:

> 1) Whether the candidate filing fees, election assessments and other sources of revenue for the Election Campaign Financing Trust Fund should be collected after the trust fund expires on November 4, 1996.
>
> 2) Whether, after November 4, 1996, the Department of State, Division of Elections, must continue to certify candidates' eligibility for matching funds from the Election Campaign Financing Trust Fund.
>
> 3) Whether the Comptroller may continue to approve the disbursement of matching funds to candidates after November 4, 1996.

For the reasons which follow, the answer to each of these questions is no.

DISCUSSION

Section 215.32, Florida Statutes, requires that all state revenue be segregated into one of three types of accounts: (1) the General Revenue Fund; (2) the Working Capital Fund; and (3) Trust funds. See

generally, § 215.32, Fla. Stat. (1995) (State funds; Segregation). Subsection (2)(a) of section 215.32 defines the General Revenue Fund to consist of all moneys received by the state except those designated to the Working Capital Fund under subsection (2)(b) or to trust funds under subsection (3)(c). Thus, except under certain limited circumstances not applicable here, these funds are required by definition to be maintained exclusive from each other.

Sections 99.092(1), 99.093(1), and 105.031(3), Florida Statutes, require the Division of Elections, and the other qualifying officers of the State, to transfer a portion of all candidate filing fees and election assessments collected from candidates for State and local office to the ECF Trust Fund. Revenues from fines and penalties collected for elections law violations pursuant to sections 106.04(8)(a), 106.07(8)(a) and 106.25, Florida Statutes, are also required to be deposited into the ECF Trust Fund.

Since these revenues are earmarked for deposit into a particular trust account, they are "trust funds" as defined in section 215.32(2)(b)1, Florida Statutes, which provides:

> (b)1 The trust funds shall consist of moneys received by the state which under law or trust agreement are segregated for a purpose authorized by law... (emphasis added).

When the ECF Trust Fund terminates on November 4, 1996, these funds, if collected, could not be "segregated" as required by law. In short, it would be impossible to treat these moneys as "trust funds" by depositing them into the appropriate trust account as required by section 215.32, and by each of the other statutes which govern the collection of these fees.

Therefore, the continued collection of fees, assessments or other revenues earmarked for the ECF Trust Fund would be improper. § 215.32, Fla. Stat. (1995), see also, Oven v. Ausley, 143 So. 588, 589 (Fla. 1932) ("When an enforced contribution is exacted from the people by the power of taxation, it is for a specific public purpose, and the fund so raised is a trust fund in the hands of the legal custodians of it."); Advisory Opinion to the Governor, 201 So.2d 226 (Fla. 1967) (trust funds within the State Treasury must be held for the specific use for which they are contributed); Advisory Opinion to the Governor, 200 So.2d 534 (Fla. 1967).

For the foregoing reasons, questions 1 is answered in the negative. The revenues in question should not be collected after November 4, 1996.

The answer to question 2, regarding the certification of candidates, turns on our conclusion that there are no funds to be distributed to candidates. Article III, section 19(f)(4), of the Florida Constitution, provides that "all cash balances and income of any trust funds abolished under this section shall be deposited into the general revenue fund." Sections 215.3206(2) and 215.3208(4)(a), Florida Statutes, further provide that upon termination of a trust fund, the Comptroller "shall close out and remove the Trust Fund from the various State accounting systems." Thus, on November 4, 1996, the cash balance in the ECF Trust Fund, together with any income generated by the fund, will revert to general revenue and the account will be closed. As previously explained, no additional revenue will be collected for deposit in the ECF Trust Fund.

The FECFA also provides that "[i]f necessary, additional funds shall be transferred to the [ECF] Trust Fund from general revenue in an amount sufficient to fund qualifying candidates." § 106.32(1), Fla. Stat. (1995). Thus, in the event of a shortfall, additional funds were to be transferred into the ECF Trust Fund from general revenue. In Republican Party of Florida v. Smith, 638 So.2d 26 (Fla. 1994), thhis back-up funding provision was held to be a valid appropriation. Therefore, we must consider whether this provision could continue to provide financing for the FECFA from General Revenue.

A condition precedent to release of back-up funding from general revenue pursuant to section 106.32 (1) is a determination by the Division of Elections that a transfer is "necessary" because there is a shortfall in the Trust Fund. This will not occur since the ECF Trust Fund will no longer exist.

Furthermore, the ECF Trust Fund is being terminated pursuant to Article III, section 19(f), of the Florida Constitution. The history of that provision shows that the principle reasons for eliminating trust funds was to subject the State's revenue to greater legislative control by ensuring that "all monies go first into the General Revenue Fund to be appropriated by the legislature." Resolution of the Tax and Budget Reform Commission, Budgeting, Planning and Appropriation Revisions at 7 (May 7, 1992) ("Commission Resolution") (Appendix A). It would be completely contrary to that purpose to conclude that, in the absence of a trust fund, money should now be paid out of general revenue with no new legislative control whatsoever. Accordingly, the back-up appropriation provision must be considered inextricably intertwined with the ECF Trust Fund, such that it becomes inoperative when the trust fund goes out of existence.

In response to your question number 2, the Division of Elections cannot certify candidates to receive funds from a trust fund that does not exist or from general revenue in the absence of new legislative action. Accordingly, question 2 is answered in the negative.

Finally, your third question asks whether the Comptroller may continue to approve the disbursement of matching funds to candidates after the Trust Fund terminates.

Article VII, section 1(c), of the Florida Constitution, states that "[n]o money shall be drawn from the treasury except in pursuance of an appropriation made by law." Coalition for Adequacy and Fairness in School Funding, Inc. v. Chiles, 21 Fla. L. Weekly S271, 274 (Fla. June 27, 1996); Chiles v. Children A, B, C, D, E, and F, 589 So.2D 260, 267 (Fla. 1991). Thus, the Legislature has "the exclusive power of deciding how, when, and for what purpose the public funds shall be applied." State ex rel. Kurz v. Lee, 121 Fla. 360, 384, 163 So. 859, 868 (fla. 1935) (interpreting former Art. IX, § 4, Fla. Const.); Lainhart v. Catts, 73 Fla. 735, 75 So. 47 (Fla. 1917). By eliminating the ECF Trust Fund, the Legislature has stripped the FECFA of any source of funding, and it has expressed its intention to subject the FECFA's funding to its control. Commission Resolution at 7 (explaining that eliminating trust funds was intended to "result in the legislature having more flexibility in establishing and funding the priorities of the state as those priorities change over time," and noting the Commission's intention that all revenues be "comingled in the General Revenue Fund for the purpose of the appropriation process."). Such a fundamental legislative change to the FECFA cannot be ignored by the parties charged with its administration. Reino v. State, 352 So.2d 853, 861 (Fla. 1981) ("when a statute is amended, it is presumed that the Legislature intended it to have a meaning different from that

accorded it before the amendment.").

There is nothing in the Florida Stattues or Florida Constitution that allows the Comptroller to authorize disbursements to candidates under the FECFA from any source other than the ECF Trust Fund. On the contrary, the Florida Constitution prohibits the Comptroller from doing so by providing that "[n]o money shall be drawn from the treasury except in pursuance of an appropriation made by law," Art. VII, § 1(c), Fla. Const., and by affirmatively directing the Comptroller to "close out" the ECF Trust Fund. § 215.3206(2), Fla. Stat. (1995). As the State's chief fiscal officer, the Comptroller must obey these directives. A public officer's ability to authorize the payment of funds is limited and may be exercised only in the manner and for the purposes authorized by law. See, 9 Fla. Jur. 2d, Civil Servants and Other Public Employees, §§ 116-123 (and cases cited therein).

Accordingly, the answer to question 3 is no. The Comptroller may not continue to authorize disbursements to candidates under the FECFA after November 4, 1996.

SUMMARY

Pursuant to the FECFA, the Department of State, Division of Elections has historically been responsible for: (1) receiving revenue for deposit in the ECF Trust Fund; (2) reviewing candidate requests for contributions from the ECF Trust Fund; (3) certifying candidates' eligibility to receive contributions; (4) verifying the amount of funds to be distributed from the ECF Trust Fund to each candidate, and; (5) advising the Comptroller when to release funds to candidates, and the amounts to be released. All of these functions, and the Comptroller's ability to disburse payments to candidates, are dependent upon the existence of the ECF Trust Fund.

The Legislature's decision to allow the ECF Trust Fund to terminate has eliminated the sole funding source for the FECFA. Without funding, the FECFA is inoperative. As a result the responsibilities of the parties charged with the administering the FECFA, including the collection of funds for deposit in the ECF Trust Fund, are abated pending further legislative action.