

DE 98-05 - April 13, 1998

**Public Campaign Financing
§§106.07(1), 106.34, 106.353, 106.355, Fla. Stat.**

TO: Ms. Sally Harrell, Campaign Manager, Jeb Bush for Governor, 2810 Sharer Road, Suite 9-10, Tallahassee, Florida 32303

Prepared by: Division of Elections

This is in response to your request for an advisory opinion from the Division of Elections regarding the Florida Election Campaign Financing Act, §§106.30-106.36, Fla. Stat. (Act). You are the Campaign Manager for the Jeb Bush for Governor Campaign and, pursuant to section 106.23(2), Florida Statutes, the Division is authorized to render this opinion to you.

For purposes of the Act, you ask:

Whether the payment of additional funds to a candidate who is receiving public funds pursuant to the provisions of the Act is triggered when a non-participating candidate receives contributions which exceed the expenditure limits of the Act or whether such payments are only triggered when the non-participating candidate makes expenditures that exceed the Act's expenditure limits.

You further state that you read the plain language of section 106.355, Florida Statutes, to mean that the extra payments are triggered only when the non-participating candidate makes expenditures in excess of this year's expenditure limits and reports those expenditures pursuant to section 106.07, Florida Statutes.¹ We agree.

Section 106.355, Florida Statutes, provides, in pertinent part:

Whenever a candidate for the office of Governor or member of the Cabinet who has elected not to participate in election campaign financing . . . exceeds the applicable expenditure limit provided in s.106.34, all candidates participating in such election campaign financing are, . . . released from such expenditure limit to the extent the non-participating candidate exceeded the limit, are still eligible for matching contributions up to such limit, and shall not be required to reimburse any matching funds provided pursuant thereto.

Section 106.34, Florida Statutes, provides the overall expenditure limits for the Act and provides that expenditures do not include legal and accounting services rendered on behalf of the candidate. §106.34 (4), Fla. Stat. Likewise, they do not include in-kind contributions, *informal opinion to the Jim Smith Campaign from Phyllis Slater, (June 21, 1994)*, expenditures made in prior gubernatorial or cabinet level races during the same election cycle, *Smith v. Crawford, 645 So.2d 513 (Fla. 1st DCA 1994)*, *Op. Div. Elec. 94-17, (September 16, 1994)*, or refunds of contributions, *Op. Div. Elec. 94-13, (July 18,*

1994).

The overall statutory scheme set out in the Act clearly distinguishes between contributions and expenditures. §§106.34 and 106.355, *Fla. Stat.* As discussed in the above-cited opinions, a participating candidate's eligibility for additional funds only arises when a non-participating candidate spends more than he or she is allowed to spend under the provisions of sections 106.353 and 106.355, Florida Statutes. In addition, section 106.07(1)(b), Florida Statutes, provides for weekly reporting by both participating and non-participating candidates. As we stated in *Op. Div. Elec. 94-18, (October 3, 1994)*, the purpose of this accelerated reporting is so the Division ". . . can readily determine when and to what amount a non-participating candidate has exceeded the expenditure limits."

SUMMARY

Candidates for Governor and Cabinet who are receiving matching funds are only eligible to receive additional funds when a non-participating candidate exceeds the expenditure cap provided in section 106.34, Florida Statutes. Legal and accounting services, in-kind contributions, refunds of contributions, and expenditures made in a prior gubernatorial or cabinet level race are not considered expenditures for purposes of the expenditure cap.

¹ As calculated by the Division of Elections based on the Consumer Price Index for All Urban Consumers, U.S. City Average. All Items, 1967-100, United States Department of Labor, Bureau of Labor Statistics, the expenditure limits for Governor and Cabinet candidates for the 1998 election cycle are \$5,758,658 and \$2,303,427, respectively. *See §106.34(3), Fla. Stat.*