

RESCINDED

DE 98-10 - June 12, 1998

Appeal of Automatic Fines

§§106.011(1),(3),(4),(6), 106.03(1), 106.04(2),(8), 106.07(2)(b),(8), 106.26(1), F. S.

TO: Mr. Stephen R. MacNamara, Post Office Box 688, Tallahassee, Florida 32302

Prepared by: Division of Elections

This is in response to your request for an advisory opinion regarding automatic fines incurred as a result of the late filing of a campaign treasurer's report. You are Legal Counsel to a political committee and, pursuant to section 106.23(2), Florida Statutes, the Division of Elections (Division) has authority to render this opinion to you. You ask:

Where a committee registered under federal law is also registered as a Florida committee pursuant to Florida law and files a late report, can the amount of the fine imposed by Florida be based on the committee's out-of-state activity which is wholly unrelated to Florida. Additionally, you ask how the appeal of an automatic fine is properly lodged with the Florida Elections Commission.

Your inquiry concerns a political committee that received a fine letter from the Division after filing a late report. The committee concedes that it has filed a late report, but disputes the method of calculating the fine. The report in question detailed the committee's nationwide activity. However, only \$500 of the committee's activity was for the purpose of supporting or opposing candidates or issues in Florida. When it received a fine letter from the Division, the committee wrote to the Division noting that the fine had been calculated based on the committee's total activity during the reporting period, all but \$500 of which occurred outside Florida and involved no Florida elections. In its letter, the committee requested a recalculation of the fine.

The Division treated this letter as an appeal of the automatic fine and forwarded the matter to the Florida Elections Commission. The committee has since submitted an amended report to the Division reflecting its expenditures in Florida and a check in the amount of \$125, which would be the amount of the recalculated fine (25% of the total receipts or expenditures).

Section 106.03, Florida Statutes, requires persons to register as a political committee with the Division if they anticipate receiving contributions or making expenditures in excess of \$500 in the aggregate during a calendar year for the purpose of influencing Florida elections. §§106.03(1) and 106.011(1), Fla. Stat. Contributions and expenditures are generally defined as "money or anything of value" made or received "for the **purpose of influencing the results of an election.**" §§106.011(3),(4), Fla. Stat. (emphasis supplied). Election, in turn, is defined as "any primary election, special primary election, general election, special election, or municipal election **held in this state**" for the purpose of electing candidates to non-federal office. §§106.011(6),(10) Fla. Stat. (emphasis supplied).

Political committees registered under section 106.03, Florida Statutes, and committees of continuous existence registered under section 106.04, Florida Statutes, must file regular reports of their contributions and expenditures as defined above. If such reports are filed late, they are subject to an automatic fine for each late day. §§106.04(8), 106.07(8), Fla. Stat. The Division is required to notify persons if their reports are late. §§106.04(8)(b) and 106.07(8)(b), Fla. Stat. Upon receipt of the report, the Division then determines the amount of the fine and notifies the person who filed the late report as to the amount of the fine. *Id.* Such person must either pay the fine or, within 20 days of the notice, file an appeal with the Florida Elections Commission. *Id. Accord, Op. Div. Elec. 91-2, (February 5, 1991).* Persons desiring to appeal their fine **may request** and are entitled to a hearing before the Florida Elections Commission. §§106.04(8)(c) and 106.07(8)(c), Fla. Stat. (emphasis supplied). If persons request such a hearing, they are required to notify the Division of **their intention** to bring the matter before the commission. *Id.* (emphasis supplied). If the person fails to either pay his fine to the Division or appeal the fine to the commission, the Division must notify the commission, whereupon the commission may then prosecute on the basis of a willful violation of chapter 106, Florida Statutes. *See §106.26(1), Fla. Stat.* (The commission must consider matters reported to it by the Division including the failure to either file an appeal or pay the fine.)

Returning to your questions, it is apparent from the foregoing discussion that persons need only report to the Division contributions or expenditures which are for the purpose of influencing Florida elections. A contribution or expenditure for an activity in another state is not reportable, nor can it be used for the purpose of calculating the amount of the fine for a late-filed report.

As to the appeal process, appeals must be filed with the Florida Elections Commission, not the Florida Division of Elections. Where an appeal is erroneously filed with the Division, and the intent to appeal is clear, the Division may, at the request of a filing party, forward an appeal to the Commission.¹ However, in the instant case, the mere transmittal of a letter to the Division requesting a correction in the amount of a fine should not have been treated as an appeal to the Florida Elections Commission. Where the Division receives a request for recalculation of a fine or an opportunity to correct a report, it should require the requesting party to file an amended report containing accurate information, and recalculate the fine based on such information. Otherwise, judicial and administrative resources might be wasted adjudicating harmless reporting errors. *Cf., §106.07(2)(b), Fla. Stat.* (The Division may accept reports on a conditional basis and notify the reporting person that he or she may file an amended report containing all information necessary to complete the report.)

SUMMARY

The only contributions and expenditures that must be reported under chapter 106, Florida Statutes, are those that are made for the purpose of influencing non-federal elections conducted in this state. Automatic fines assessed by the Division of Elections cannot be based on non-Florida activity conducted outside this state. A letter written to the Division of Elections that does not explicitly indicate that it is intended to serve as an appeal does not constitute an appeal to the Florida Elections Commission. Appeals of fines assessed by the Division of Elections must be appealed directly to the Florida Elections Commission. When a letter is written to the Division contesting the calculation of a fine, which the Division knows is based on out-of-state activity, the Division should provide the

reporting party with an opportunity to amend his report.