

DE 98-15 - November 16, 1998

Fishing Tournament
§§106.011(3),(11), 106.025, 106.041(1), 106.08(5), Fla. Stat.

TO: Mr. Kent Wetherell, II, Hopping, Green, Sams & Smith, Post Office Box 6526, Tallahassee, Florida 32314

Prepared by: Division of Elections

This is in response to your request for an advisory opinion, dated October 22, 1998, regarding a proposed fishing tournament. You represent a group called Manufacturers Making a Difference (MMAD), a committee of continuous existence (CCE) that has been certified by the Division, pursuant to section 106.04, Florida Statutes. Therefore, the Division of Elections is authorized to provide an advisory opinion to you, pursuant to section 106.23(2), Florida Statutes.

MMAD wishes to raise funds by conducting a fishing tournament. The tournament will be organized by a third party organizer and entry fees will be paid by the participants directly to the organizer. The organizer will then remit the net proceeds (i.e., entry fees less tournament expenses) from the tournament to MMAD.

Based on the foregoing and subsequent discussions with this office, you have asked two questions:

1. May MMAD raise funds for its political activities by conducting the proposed fishing tournament?
2. If MMAD is permitted to raise funds in this manner, how should those funds be reported to the Division of Elections?

DISCUSSION

It is the Division's opinion that MMAD is permitted to raise funds for its political activities in the manner described above. Net proceeds may be reported by MMAD in the aggregate and listed as "proceeds from fishing tournament."

In our discussions, we reviewed several statutory provisions that may be implicated by the above scheme. Section 106.08(5), Florida Statutes, is inapplicable here because it is intended to prohibit contributions "through or in the name of another" with respect to contributors seeking to hide their identity and also to avoid the contribution limits of section 106.08, Florida Statutes. In this case, the tournament participants will be identified. To that end, we suggest that MMAD attach a list of the tournament participants to the applicable report when it is filed with the Division. The report should also include supplemental information as to the amount the organizer deducted from the gross proceeds to cover his overhead plus profit.

The gross proceeds generated by the tournament are not, technically speaking, "contributions" because the tournament participants are paying the entry fees strictly for the purpose of participating in the tournament and not to "influence the results of an election." § 106.011(3), Fla. Stat. (Supp. 1998). Most of the participants are professional anglers and the proceeds of the fundraiser will go to the committee's general fund.

In order to qualify as a CCE, the committee must derive at least 25% of its income from dues. §106.041(1), Fla. Stat. At times, this creates a reporting problem for the committee if it has a fundraising event and contributions received from the fundraiser exceed 75% of its income. If this occurs, the committee must either return contributions or amend its dues schedule to increase the amount of dues. As long as there is full disclosure, we do not believe that the law should be interpreted to require that CCE's engage in such financial gymnastics under the facts you have presented. Therefore, when a third party organizer conducts a fundraising event on behalf of a CCE, the organizer may deduct its overhead plus profit prior to remitting the net proceeds to the committee. The committee may then report the net proceeds as contributions and supplement such report with a list of the participants and an accounting which shows the organizer's expenses.

Finally, the tournament itself would not qualify as a campaign fundraiser, and therefore would not be subject to section 106.025, Florida Statutes. A campaign fundraiser is defined as "any affair held to raise funds to be used in a campaign for public office." §106.011(11), Fla. Stat. MMAD will receive the net proceeds from the tournament, MMAD is free to underwrite any of its activities with the proceeds. The possibility that MMAD may, at some future date, support as yet unnamed candidates or issues, is of no consequence. There is no designated candidate or campaign to whom the funds will be contributed.

SUMMARY

MMAD may raise funds for its political activities by conducting a fishing tournament. The tournament will be organized and conducted by a third party. The net proceeds may be reported to the Division with an attachment listing the tournament participants and gross revenue for purposes of full disclosure.