

One or more statutes addressed in this opinion has changed.

Please consult current Florida law.

October 9, 2003

Ms. Chance Irvine, Chair
Florida Elections Commission
107 W. Gaines Street
Tallahassee, FL 32300-1050

RE: DE 03-08
Campaign Expenditures for Political
Advertisements and Media Consultants
§106.11(1), §106.021(3), Florida Statutes

Dear Ms. Irvine:

This is in response to your request for a formal opinion on the requirements of section 106.11, Florida Statutes, as it relates to the reporting of advertising consultant costs and actual advertising costs. You are Chair of the Florida Elections Commission and pursuant to section 106.23(2), Florida Statutes, the Division of Elections has the authority to issue an opinion to you.

Essentially, you ask the following question:

Can a candidate who is procuring both media related consultant services and mass media advertisements issue a campaign check made payable to the consultant for the expressed purpose of procuring actual advertising from print and broadcast media outlets on behalf of the candidate or must the candidate issue a separate campaign check to each media outlet?

As you note in your letter, the Division of Elections has previously addressed this question by formal opinion in DE 86-14. In that opinion, the Division of Elections stated that based upon the language contained in sections 106.021(3) and 106.11(1), Florida Statutes, “all advertising expenditures, whether television, radio, newspaper, magazine, must be paid by the campaign treasurer or deputy campaign treasurer on a check drawn on the account of the candidate or political committee. This does not preclude candidates or political committees from using advertising agencies or other publicity intermediaries in conducting their campaigns; however, it does require that each vendor of services be paid by a check drawn on the campaign account of the candidate or political committee.” That opinion has not been rescinded.

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You also note an April 15, 1997, informal letter that was issued by Michael T. Cochran, the legal counsel for the Division of Elections at that time, which stated that it was permissible for a candidate to write one campaign check payable to the media consultant for his fee and separate checks payable to the same consultant for other expenses such as procuring the actual media advertisements. Because of the existence of the April 15, 1997 letter, you are seeking clarification as to the division's position on this matter. It is important to note that the April 15, 1997 letter from Mr. Cochran was not issued as a formal opinion of the division. Furthermore, pursuant to Rule 1S-2.010(7), F.A.C., such a letter does not constitute an advisory opinion rendered pursuant to section 106.23(2), Florida Statutes. That having been said, it is understandable that such a letter could cause confusion and that clarification may be necessary.

Section 106.021(3), Florida Statutes, continues to state that, with the exception of independent expenditures, no expenditures (including those of the candidate and his or her family) shall be directly or indirectly made in furtherance of the candidacy of any person for nomination or election to political office in this state, or on behalf of any political committee, except through the duly appointed treasurer of the candidate or political committee.

If the media consulting firm pays for the candidate's actual media advertisements, they would be making a direct expenditure in furtherance of the candidacy. Such an expenditure is prohibited by section 106.021(3), Florida Statutes. Expenditures in furtherance of the candidacy can only be made through the duly appointed treasurer.

Further, if such activity were permissible, when reporting a check issued from the campaign account to a media consultant to pay for procuring actual campaign advertisements, the campaign treasurer would only be required by section 106.07(4), Florida Statutes, to report the name and address of the consultant, and the amount, date and purpose of the expenditure. In such a case, simply stating that the expenditure was made to the consultant for purposes of procuring media advertising for the candidate would be sufficient. However, such reporting certainly would not provide the public with actual information as to which media vendors actually received the campaign account dollars. Such reporting would not comply with the primary purpose of the campaign finance law, i.e. full disclosure of where campaign dollars are being spent.

Therefore, as previously stated in DE 86-14, a candidate who is procuring both media related consultant services and mass media political advertisements must issue a separate campaign check to each media outlet that is providing advertising services. A campaign check cannot be issued in the name of the consultant who in turn would then pay each of the media outlets with a check issued by the consultant.

SUMMARY

A candidate who is procuring both media related consultant services and mass media political advertisements must issue separate checks drawn on the campaign account to the media consultant for their services and to each media outlet that is providing advertising services. A campaign check cannot

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be issued in the name of the consultant who in turn would then pay each of the media outlets with a check issued by the consultant.

Sincerely,

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Director, Division of Elections

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