

February 18, 2004

Mr. John Davenport
20562 Tappen Zee Drive
Port Charlotte, Florida 33952

RE: DE 04-03
§106.08(5)(c),
Florida Statutes

Dear Mr. Davenport:

This is in response to your request for an advisory opinion regarding whether section 106.08(5)(c), Florida Statutes, prohibits you as an announced candidate for the office of Sheriff of Charlotte County from joining local republican clubs and the local Chamber of Commerce. You state that you are a candidate for the office of Sheriff of Charlotte County and pursuant to section 106.23(2), Florida Statutes, the Division of Elections has authority to issue an opinion to you.

You essentially ask the following questions:

1. As a candidate for office, can I now join a local republican club or the local Chamber of Commerce when I have not previously been a member of such clubs prior to my candidacy?
2. If I can join such an organization, can I pay for the membership fee and any subsequent fees out of my own personal funds or do they have to be paid from my campaign account?

The short answer to Question 1 is yes. With regard to Question 2, you may pay the membership fees from either your personal funds or your campaign account as long as you are not making the payments in exchange for political support.

To fully understand the current requirements of section 106.08(5)(c), Florida Statutes, it is necessary to review the recent history of this statutory provision.

Section 106.08(5), Florida Statutes, (2001) previously provided as follows:

A person may not make any contribution through or in the name of another, directly or indirectly, in any election. Candidates, political committees, and political parties may not solicit contributions from *or make contributions to* any religious, charitable, civic, or other causes or organizations established primarily for the public good. However, it is not a violation of this subsection for a candidate, political committee, or political party executive committee to make gifts of money in lieu of flowers in memory of a deceased person or for a candidate to continue membership in, or make regular donations from personal or business funds to, religious, political party, civic, or charitable groups of which the candidate is a member or to which the candidate has been a regular donor for more than 6 months. A candidate may purchase, with campaign funds, tickets, admission to events, or advertisements from religious, civic, political party, or charitable groups. [Emphasis added]

In late 2001, in the case of *Florida Right To Life v. Lamar, et al.*, 273 F.3d 1318 (11th Cir. 2001), the federal circuit court held former section 106.08(5), Florida Statutes, to be unconstitutional. In doing so, the Court found that the former provision created a “general rule forbidding political candidates from making any donations out of personal or campaign funds to the organizations referenced therein.” They further found that while the blanket restriction on donations was then diluted somewhat by three distinct exceptions, a wide range of donative options still remained forbidden to candidates, such as contributing to newly discovered charities. The Court concluded that the statute “swept broadly to curtail donative impulses of candidates and, conversely, to curtail the ability of many organizations to solicit and receive candidate donations,” and in doing so violated the First Amendment of the federal Constitution. While the lower court had found the provision constitutional using a narrowing construction of the statute which limited its applicability only to contributions “made in exchange for political support,” the appellate court found that a plain reading of the statute could not justify such a narrowing construction. Further, in a footnote, the appellate court stated, “[b]ecause we determine that contributions in the context of §106.08(5) cannot be circumscribed to include only donations made for the purpose of influencing an election outcome, we do not reach the question of whether such a construction would itself render the provision unconstitutional under the First Amendment, as [plaintiff] has argued.”

In response to this case, in 2002 the Florida Legislature enacted the current version of section 106.08(5), Florida Statutes, which reads as follows:

(5)(a) A person may not make any contribution through or in the name of another, directly or indirectly, in any election.

(b) Candidates, political committees, and political parties may not solicit contributions from any religious, charitable, civic, or other causes or organizations established primarily for the public good.

(c) Candidates, political committees, and political parties may not make contributions, *in exchange for political support*, to any religious, charitable, civic, or other cause or organization established primarily for the public good. It is not a violation of this paragraph for:

1. A candidate, political committee, or political party executive committee to make gifts of money in lieu of flowers in memory of a deceased person;
2. A candidate to continue membership in, or make regular donations from personal or business funds to, religious, political party, civic, or charitable groups of which the candidate is a member or to which the candidate has been a regular donor for more than 6 months; or
3. A candidate to purchase, with campaign funds, tickets, admission to events, or advertisements from religious, civic, political party, or charitable groups. [Emphasis added]

In comparing the two versions of the statute, it is evident that the legislature clearly was addressing the blanket prohibition concerns raised by the court relating to a candidate's ability to make contributions. They specifically structured the section to create a stand alone provision prohibiting the solicitation of contributions from these organizations. They then created an independent section addressing contributions by candidates, political committees, and political parties to these organizations and placed a very specific, and familiar, qualifier on the type of contributions that were to be regulated by that section. They specifically placed the restriction only on contributions made in exchange for political support to any of the enumerated entities. Finally, while the legislature deemed to reiterate the three previous exemptions, in light of the preceding qualifying clause, which narrows the breadth of the restriction, the three specified items cannot reasonably be viewed as an exhaustive list of contributions which would be permissible under this section.

Therefore, the current version of section 106.08(5)(c), Florida Statutes, would not prohibit you as a candidate from now joining a local republican club or the local Chamber of Commerce when you have not previously been a member of such clubs. Further, you may pay the membership fees and subsequent fees out of your personal funds or campaign account as long as you are not making the payment "in exchange for political support." We note that while, by definition expenditures from the campaign account are "made for the purpose of influencing the results of an election," it is possible that a candidate could join such groups in the hope of furthering their candidacy without there actually being any type of quid pro quo agreement of support from the group. In that circumstance, an expenditure from the campaign account for membership fees and subsequent fees while they are a candidate would be permissible as long as they are not made "in exchange for political support."

Mr. John Davenport

February 18, 2004

Page 4

SUMMARY

Section 106.08(5)(c), Florida Statutes, would not prohibit you as a candidate from now joining a local republican club or the local Chamber of Commerce when you have not previously been a member of such clubs. Further, you may pay the membership fees and subsequent fees out of your personal funds or campaign account as long as you are not making the payment "in exchange for political support."

Sincerely,

Edward C. Kast
Director, Division of Elections

Prepared by:
Sharon D. Larson
Assistant General Counsel

ECK/SDL/ccm