

February 18, 2005

Ms. Chance Irvine, Chair
Florida Elections Commission
The Collins Building, Suite 224
107 W. Gaines Street
Tallahassee, FL 32300-1050

RE: DE 05-01
Disposition of Property Purchased With Campaign
Funds; §106.141, Florida Statutes

Dear Ms. Irvine:

This is in response to your request for a formal opinion regarding the requirements of section 106.141, Florida Statutes, as it relates to the disposition of property purchased by a candidate with campaign funds for use during the campaign which continues to have value at the end of the candidacy. 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 questions:

Are items purchased by a candidate with campaign funds for use during the campaign which still have a residual value subject to the surplus funds disposition requirements contained in section 106.141, Florida Statutes?

If such items are not subject to section 106.141, Florida Statutes, and a candidate keeps the items after the conclusion of the candidacy and chooses to contribute them for use again in a future campaign, how should they be reported?

The short answer to Question 1 is no. The answer to Question 2 is that they would be reported as an in-kind contribution to that campaign from the candidate. The candidate would be required to place a fair market value on the item at the time he or she makes the in-kind contribution.

Section 106.141(1), Florida Statutes, states:

Each candidate who withdraws his or her candidacy, becomes an unopposed candidate, or is eliminated as a candidate or elected to office shall, within 90 days, dispose of the funds on deposit in his or her campaign account and file a report reflecting the disposition of all remaining funds. Such candidate shall not accept any contributions, nor shall any person accept contributions on behalf of such candidate, after the candidate withdraws his or her candidacy, becomes unopposed, or is eliminated or elected. However, if a candidate receives a refund check after all surplus funds have been disposed of, the check may be endorsed by the candidate and the refund disposed of under this section. An amended report must be filed showing the refund and subsequent disposition. [Emphasis added.]

In that statutory section, the Florida Legislature specifically addressed “funds on deposit” in the campaign account. They did not speak to other property that may have been properly purchased with campaign funds for use during the campaign. It is a long standing principle of statutory construction that where a statute enumerates the things upon which it operates, anything not expressly mentioned is excluded. *Thayer v. State*, 335 So. 2d 815 (Fla. 1976). As a result, the statute contains no language that would require the liquidation of and/or disposition of any other assets of the campaign via section 106.141, Florida Statutes.

SUMMARY

Items purchased by a candidate with campaign funds for use during the campaign which still have a residual value are not subject to the surplus funds disposition requirements contained in section 106.141, Florida Statutes.

If a candidate keeps the items after the conclusion of the candidacy and chooses to contribute them for use again in a future campaign, they should they be reported as an in-kind contribution to that campaign from the candidate. The candidate would be required to place a fair market value on the item at the time he or she makes the in-kind contribution.

Sincerely,

Dawn K. Roberts
Director, Division of Elections

Prepared by:
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