

October 25, 2005

Ms. Karen L. Thurman, Chair
Florida Democratic Party
c/o Mr. Mark Herron, Esq.
Messer, Caparello & Self, P.A.
Post Office Box 1876
Tallahassee, FL 32302-1876

RE: DE 05-07
Political Party State Executive Committee Reporting
Requirements; §§ 106.021(3), 106.07(4)(a), 106.0705,
106.08(2)(b), and 106.29(1), Florida Statutes

Dear Ms. Thurman:

This is in response to your request for an advisory opinion via Mr. Mark Herron, Esquire. You are Chair of the Florida Democratic Party (FDP). Pursuant to Section 106.23(2), Florida Statutes, the Division of Elections has authority to issue advisory opinions to political parties. You have posed several questions regarding various campaign finance reporting requirements of political party state executive committees as they apply to the entry of required information into the Division's electronic filing system.

QUESTION 1

As background you state that the FDP outsources its payroll through a third party vendor named Time+Plus. The party provides monies to Time+Plus and Time+Plus issues payroll checks to the FDP's employees in accordance with established salary schedules. Further, from time to time the FDP includes on its payroll "campaign staff" for various candidates under the provisions of section 106.08(2)(b), Florida Statutes.

With regard to these facts you ask essentially the following question:

Pursuant to section 106.07(4)(a), Florida Statutes, is the FDP required to report as an expenditure the transfer of monies to Time+Plus only, is it required to report the amounts paid to the employees as salary, listing only the payments to the employees, or is the FDP required to report some combination of the two sets of information?

The answer to your question is that the FDP is required to report a combination of the two sets of information. The payment to Time+Plus should be reported as an expenditure and the individual amounts paid to employees must also be itemized in the “Other Distributions” detail record of the report pursuant to sections 106.07(4)(a)7. and 106.08(2)(b), Florida Statutes.

As you note in your letter, pursuant to section 106.29(1), Florida Statutes, the state executive committee of each political party regulated by Chapter 103, Florida Statutes, is required to “file regular reports of all contributions received and all expenditures made by such committee” and “[s]uch reports shall contain the same information as do reports required of candidates by s. 106.07....”

Section 106.07(4)(a), Florida Statutes, states in pertinent part as follows:

(4)(a) Each report required by this section shall contain: ...

6. The full name and address of each person to whom expenditures have been made by or on behalf of the committee or candidate within the reporting period; the amount, date, and purpose of each such expenditure; and the **name and address of, and office sought by, each candidate on whose behalf such expenditure was made**. However, expenditures made from the petty cash fund provided by s. 106.12 need not be reported individually. ...

7. The full name and address of each person to whom an expenditure for personal services, **salary**, or reimbursement for authorized expenses as provided in s. 106.021(3) has been made and which is not otherwise reported, including the amount, date, and purpose of such expenditure. However, expenditures made from the petty cash fund provided for in s. 106.12 need not be reported individually. ..

[Emphasis added.]

Further, section 106.08(2)(b), Florida Statutes, provides that certain expenditures by the party on behalf of candidates, including costs for campaign staff, are nonallocable in-kind contributions. This section specifically provides that “nonallocable, in-kind contributions must be reported by the candidate under s. 106.07 and by the political party under s. 106.29.”

Therefore, the FDP would report as an expenditure the payment to Time+Plus and list “payroll” as the primary purpose for the expenditure. Additionally, the FDP is required to report the individual amounts paid to the various employees on the “Other Distributions” detail record of the report, specifically indicating which payments were in-kind contributions to candidates by identifying the candidate receiving the benefit. For example, in the “Other Distributions” detail, you would list the name and address of the person who received the payment from Time+Plus, along with the amount of the payment. Under “Purpose” you would list “staff” and if the person is being paid on behalf of a candidate, you would indicate the name and office sought of the candidate. The Division acknowledges that the 40-character limitation on the various fields of the electronic filing system presents difficulty in entering some of the required detail information. Until the system is modified to increase the character capacity, you should enter the last name of the candidate and use reasonable abbreviations for the office sought by the candidate such as SD35 (Senate District 35). Since there is currently not enough space to enter the candidate’s address and this information can be readily obtained from various filing officers’ web sites, you are not required to enter the address information until the Division expands the character capability of that field.

QUESTION 2

You state that from time to time the FDP makes payments to credit card companies such as American Express for expenses incurred by officers and employees of the Party.

You ask essentially the following question:

Pursuant to section 106.07(4)(a), Florida Statutes, is the FDP required to report, as an expenditure, the transfer of monies to the credit card company only, is it required to report as an expenditure the amounts paid to the vendors or businesses for which payment is made by the credit card company, or is the FDP required to report some combination of the two sets of information?

In response to your inquiry, you are required to list as an expenditure the amount paid to the credit card company and also report the individual amounts paid to each vendor or business by the credit card company via the "Other Distributions" detail record.

As indicated above, section 106.29(1), Florida Statutes, requires the state executive committee of each political party regulated by chapter 103 to file a quarterly report of all contributions received and all expenditures made by such committee. The report must contain the same information as do reports required by section 106.07, Florida Statutes. As you note in your inquiry, section 106.07(4)(a)11., Florida Statutes, requires the filing of a copy of each itemized credit card statement with the Division of Elections as part of the required report.

Of particular significance to this discussion is the passage of section 106.0705(2)(b), Florida Statutes, which became effective on January 1, 2005, and provides that, "Each...state executive committee that is required to file reports with the division under...s. 106.07, or s. 106.29...must file such reports with the division by means of the division's electronic filing system." Section 106.0705(5), Florida Statutes, provides that filers should be able to do so via the Internet using standard web-browsing software by direct entry or upload into the Division's electronic filing system using campaign finance software certified by the Division. Further, it does not appear from the statutory language that the Legislature intended that filers would be required to purchase or have access to additional equipment or software that would enable them to electronically scan and attach documents to their campaign finance activity reports. Therefore, it is not possible to require that copies of the actual credit card statements be filed electronically as part of the required report by the filer.

Your question deals with how to comply with what initially may appear to be conflicting provisions of section 106.07(4)(a)11. and section 106.0705, Florida Statutes. However, any perceived conflict is ultimately resolved when examining these sections in light of the Legislature's goal and purpose in mandating electronic campaign report filing. Electronic filing allows the public to view the campaign finance information of candidates, committees and political parties without the need to travel to Tallahassee to view those reports or to request copies from our offices. Anyone can access the information through a computer at their public library or at their home. Without the electronic filing of credit card information, an important piece of the required report would be missing from the electronic information readily available to the public.

Current campaign finance software certified by the Division for use by electronic filers under section 106.0705, Florida Statutes, incorporates a functionality which enables users to report the individual charges listed on credit card statements by vendors via the uploading of "Other Distributions" detail records as defined in the Division's

electronic filing specifications. The "Other Distributions" record contains fields which would link the record to the reported expenditure to the credit card company. In addition to an upload, a system user also has the ability to directly enter this data into the Division's web application. Either method would enable you to electronically file through the system the same data which is currently contained in the credit card statement.

The Legislature's 2005 mandate that all Division filers must utilize the Division's electronic filing system in lieu of paper reports is the latest legislative expression regarding filing of reports with the Division. Given that the electronic filing system provides functionality which can capture and report the same detail as contained in the credit card statement, the Division opines that filers are required to report the information contained in the credit card statement through the electronic filing system, rather than through the filing of paper copies.

Due to a legitimate need for clarification regarding electronic filing requirements and the lack of previous guidance provided to filers on how to comply with section 106.07(4)(a)11., Florida Statutes, the Division will accept paper copies of credit card statements in lieu of the electronic filing of the detailed credit card statement data for Quarter 1 (Q1), Quarter 2 (Q2) and Quarter 3 (Q3) of 2005. Beginning with Quarter 4 (Q4), filers must provide credit card statement information through the electronic filing system, absent an extension of time granted by the Division due to additional technical requirements associated with third party vendor software.

QUESTION 3

You state that from time to time the FDP makes payments for expenses incurred by employees while on FDP business.

You ask essentially the following question:

Pursuant to section 106.07(4)(a), Florida Statutes, is the FDP required to report, as an expenditure, the payment of the monies to the employee by the FDP only, is it required to report as an expenditure the amounts paid to the vendors or businesses for which payment is made by the employee, or is the FDP required to report some combination of the two sets of information?

In answer to your question, the FDP is required to report both the payment of monies to the individual being reimbursed, as well as the amounts paid to the vendors for which payment is being reimbursed, along with other identifying information regarding the vendors.

Section 106.07(4)(a)7., Florida Statutes, provides in pertinent part that each report must contain "the full name and address of each person to whom an expenditure for . . . reimbursement for authorized expenses as provided in s. 106.021(3) has been made. . .including the amount, date and purpose of each such expenditure...." In addition, section 106.021(3)(b), Florida Statutes, requires that "[a]fter July 1, 2004, the full name and address of each person to whom the candidate or other individual made payment for which reimbursement was made by check drawn upon the campaign account shall be reported pursuant to s. 106.07(4), together with the purpose of such payment."

Therefore, section 106.07(4)(a), Florida Statutes, would require that the FDP report the name of the employee to whom the expenditure was made and that the purpose of the expenditure was "reimbursed expenses." In addition, pursuant to section 106.021(3)(b), Florida Statutes, the full name and address of each person to whom the

individual made payment for which reimbursement was sought and made, together with the purpose of the payment must be reported through the "Other Distributions" detail record.

QUESTION 4

You state that the FDP makes contributions to candidates, many of which take the form of in-kind contributions.

You ask essentially the following question:

Is the FDP required to report, as an expenditure, the payments to the individuals or entities only, together with notice to the candidate of the amount of the in-kind contribution and whether it is "allocable" or "non-allocable," or whether it is required to report all in-kind contributions to candidates as distributions on the "Other Distributions" detail record?

The FDP is required to report the direct payment to the individual or entity paid by the FDP as an expenditure and, if the payment is being made by the FDP through a third party such as Time+Plus, it is also required to report that the expenditure was on behalf of a candidate on the "Other Distributions" detail record. If the payment is being made directly to a person for services on behalf of a candidate, the party need only report the expenditure to the payee, with an indication on the purpose line that it is "consulting," "research," etc., along with the name and office sought by the candidate on whose behalf the expenditure was made.

SUMMARY

Section 106.07, Florida Statutes, requires the FDP to report as an expenditure the payment to Time+Plus and list "payroll" as the primary purpose for the expenditure and also to list the individual amounts paid to employees via the "Other Distributions" detail record. With regard to the reporting of expenditures related to credit card charges, pursuant to the new electronic filing requirements imposed by the Legislature on January 1, 2005, you must list as an expenditure the amount paid to the credit card company and also report the individual amounts paid to each vendor or business by the credit card company via the "Other Distributions" detail record contained in the Division's electronic filing system. However, due to a legitimate need for clarification regarding electronic filing requirements and the lack of previous guidance provided to filers on how to comply with section 106.07(4)(a)11., Florida Statutes, the Division will accept paper copies of credit card statements in lieu of the electronic filing of the detailed credit card statement data for Quarter 1 (Q1), Quarter 2 (Q2) and Quarter 3 (Q3) of 2005. Beginning with Quarter 4 (Q4), filers must provide credit card statement information through the electronic filing system. Sections 106.07(4)(a) and 106.021(3)(b), Florida Statutes, would require that the FDP report the name of the employee to whom an expenditure was made by the FDP to reimburse the employee for expenses paid by the employee and the purpose of the FDP's expenditure, i.e., "reimbursed expenses" and also itemize each of the individual expenditures for which reimbursement was made via the "Other Distributions" detail record. Finally, in-kind contributions to candidates must be reported by the FDP by entering the payment to the entity as an expenditure and also by reporting that the payment was on behalf of a candidate in the "Other

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Distributions” detail record, in the case of a payment to a third party. In the case of a direct payment, the party is required to report the name and address of the payee, along with the purpose and the name and office sought by the candidate on whose behalf the expenditure was made.

Sincerely,

Dawn K. Roberts
Director, Division of Elections

DKR/nlw