



INFORMATION ONLY

FLORIDA DEPARTMENT *of* STATE

CHARLIE CRIST
Governor

KURT S. BROWNING
Secretary of State

June 12, 2008

Mr. Mark Herron, Esq.
Messer, Caparello & Self, P.A.
P.O. Box 15579
Tallahassee, Florida 32317

RE: DE 08-07
Campaign Financing – Receiving
Contributions via Pay Pal
§§ 106.05 and 106.07(1), Florida Statutes

Dear Mr. Herron:

This letter responds to your request for an advisory opinion. As a campaign treasurer for candidates, political committees, and committees of continuous existence, you are a person engaged in political activity; therefore, the Division of Elections has the authority to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2007), concerning your compliance with Florida's election laws. You have an inquiry about the reporting of contributions which a campaign receives through an online payment service such as Pay Pal.

As background to your request, you recite the contents of a letter written by an attorney in the Office of the General Counsel, Department of State, in 2004 to a municipal clerk, in which the attorney opined:

Chapter 106, Florida Statutes, does not prohibit the acceptance of campaign contributions via Pay Pal. If a candidate chooses to receive a contribution via Pay Pal, the candidate would report the entire amount that is sent via Pay Pal as a contribution to the campaign and then report the transactional fee as an expenditure.

You indicate that the 2004 letter does not address the timing of the receipt of such funds by the campaign account; therefore, you now ask:

Is it appropriate to report the contribution as being received on the day the contribution is made or is it appropriate to report the contribution as being received on the date the monies received by the Pay Pal contribution are deposited in the campaign account?

The answer is that the campaign is to report the contribution as being received when the campaign comes into possession of the contribution.

Mr. Mark Herron, Esq.

June 12, 2008

Page 2 of 2

We preface our response by adhering to the statements in the 2004 letter above; therefore, campaigns may use an online payment service organization, like Pay Pal, on the campaign's website to receive its own campaign contributions. The Pay Pal scenario is to be contrasted with that in *Division of Elections Opinion 08-03* (March 24, 2008) in which we opined that it would be improper for a third-party, without first registering as a political committee, to offer online patrons the opportunity to make campaign contributions on the third-party's website for the purpose of the third-party, after deducting its transaction fee, to transfer the contributions to applicable candidates and political committees. [*Emphasis supplied.*]

In response to your question, section 106.07(1), Florida Statutes (2007), provides "Each campaign treasurer designated by a candidate or political committee pursuant to s. 106.021 shall file regular reports of all contributions received, and all expenditures made, by or on behalf of such candidate or political committee." (*Emphasis supplied.*) So, a campaign treasurer is to report a contribution when it is received by the campaign, that is, when it comes into the possession of the campaign. In the typical Pay Pal scenario where Pay Pal makes an electronic transfer of contribution funds to the campaign account, the campaign would report the contribution as having been made at the time of its deposit in the campaign account via the electronic transfer. This situation is akin to contributions made by mail where the U.S. Postal Service acts as the third-party for purpose of delivering the contribution. Although the contributor may mail a contribution several days before the campaign receives it, the campaign reports the contribution upon its receipt, not the date that the contributor mailed the contribution. If the results were otherwise, the campaign would likely violate section 106.05, Florida Statutes (2007), requiring funds received to be deposited in the campaign depository within five business days.

SUMMARY

A campaign treasurer is to report a contribution when it is received by the campaign, that is, when it comes into the possession of the campaign. In the typical Pay Pal scenario where Pay Pal makes an electronic transfer of contribution funds to the campaign account, the campaign would report the contribution as having been made at the time of its deposit in the campaign account via the electronic transfer.

Sincerely,



Donald L. Palmer

Director, Division of Elections

Prepared by:

Gary J. Holland

Assistant General Counsel