



FLORIDA DEPARTMENT *of* STATE

CHARLIE CRIST
Governor

KURT S. BROWNING
Secretary of State

June 2, 2009

Ms. Susana Gomez
Campaign to Re-Elect Scott J. Silverman
10 SW S. River Drive, #808
Miami, Florida 33130

RE: DE 09-03
Campaign Financing – Soliciting and
Receiving Contributions via Pay Pal
§§ 106.05 and 106.08(5), Florida Statutes

Dear Ms. Gomez:

This letter responds to your request for an advisory opinion. As a campaign treasurer for a candidate, you are a person engaged in political activity; therefore, the Division of Elections has authority to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2008), concerning your compliance with Florida's election laws. You inquire about a campaign's solicitation of contributions via Pay Pal and the depositing of those contributions into the campaign depository.

First, you seek clarification regarding that portion of *Division of Elections Opinion 08-07* (June 12, 2008), which states: “[C]ampaigns may use an online payment service organization, like Pay Pal, on the campaign's website to receive its own campaign contributions.” The campaign for which you are the treasurer desires to use a bulk emailing service company to distribute campaign emails with a Pay Pal icon embedded in the emails on which persons may click to make contributions to the campaign, rather than merely relying on a Pay Pal icon being on the campaign's website. You wish to know if the emails would be permitted.

The short answer to this inquiry is “yes.” The reason that we emphasized the phrase “on the campaign's website” in *Division of Elections Opinion 08-07* (June 12, 2008) was to clearly distinguish it from *Division of Elections Opinion 08-03* (March 24, 2008) in which a third-party sought to solicit contributions for candidates into its own depository via a third-party's website. Thereafter, the third-party would periodically send the contributions to the candidates. We deemed that situation to be a violation of the Election Code's prohibition that one may not make a contribution through another. § 106.08(5), Fla. Stat. (2008). Although in your scenario the campaign would be using the services of a bulk emailer, it is the campaign's emails that are being distributed and it is the campaign's Pay Pal account being accessed, not a third-party organization's account. Your situation is akin to hiring a bulk mail service company to send out

Ms. Susana Gomez

June 2, 2009

Page 2 of 2

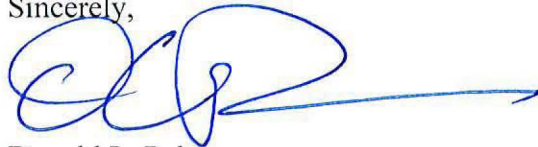
political advertisements for the campaign and soliciting contributions via the advertisements. In your case, the solicitation of contributions is being made through the campaign's own Pay Pal account embedded in the campaign's email, not through some third-party's account for later distribution to the candidate's depository. As such, your situation does not violate the campaign financing provisions of the Election Code.

Second, you seek an interpretation concerning section 106.05, Florida Statutes (2008), as it relates to the receipt of contributions via Pay Pal. That statute, in part, provides: "Except for contributions made to political committees made by payroll deduction, all deposits shall be accompanied by a bank deposit slip containing the name of each contributor and the amount contributed by each." In the typical Pay Pal scenario, Pay Pal sends an electronic transfer of contribution funds to the candidate's campaign account, but there is no "bank deposit slip." However, Pay Pal provides the campaign a list identifying the full name of the each contributor, the amount contributed, and the date the contribution was transferred to the campaign depository. If the campaign treasurer maintains the list provided by Pay Pal, you ask if this would satisfy the statutory requirements of section 106.05, Florida Statutes (2008). We recognize the complexities of the modern banking world and the widespread use of "wire" or electronic transfers of funds in lieu of traditional check deposits. Having approved the use of Pay Pal for candidates to receive contributions, we also approve the use of the individualized Pay Pal listing of contributions you have described as a substitute for a "bank deposit slip" when "wire" or electronic transfers are involved. We believe that such a list satisfies the legislative intent to ensure that deposits going into a campaign depository are specifically identified and traceable by the name of the contributor and the amount each contributor donated.

SUMMARY

A campaign may solicit donations through its emails with a Pay Pal icon embedded in the email which recipients may click on to make contributions to the campaign via Pay Pal. Section 106.05, Florida Statutes (2008), which requires a bank deposit slip with the contributor's name and contribution amount when funds are deposited in a campaign depository, is satisfied when Pay Pal electronically transfers funds into a candidate's campaign depository and Pay Pal provides the campaign a list identifying the name of each contributor, the amount contributed, and the date the contribution was transferred electronically to the campaign depository, which list is then maintained by the campaign treasurer.

Sincerely,



Donald L. Palmer

Director, Division of Elections