



## FLORIDA DEPARTMENT *of* STATE

**CHARLIE CRIST**  
Governor

**KURT S. BROWNING**  
Secretary of State

December 21, 2009

Ms. Karen L. Thurman  
Chair, Florida Democratic Party  
214 South Bronough Street  
Tallahassee, Florida 32301

RE: DE 09-08  
Campaign Financing – In-Kind Contributions and  
Valuation of Private Aircraft Travel  
§§ 106.055 and 106.08(2), Florida Statutes.

Dear Ms. Thurman:

This letter responds to your attorney's request for an advisory opinion on your behalf. Because you are the chairperson of a political party, the Division of Elections has the authority to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2009), concerning the party's compliance with Florida's election laws.

Your attorney asks a series of questions concerning section 106.055, Florida Statutes (2009), and the proper valuation of private aircraft travel provided by the political party to its candidates. Section 106.055, entitled "Valuation of in-kind contributions," states in part: "Travel conveyed upon private aircraft shall be valued at the actual cost of per person commercial air travel for the same or a substantially similar route."

The Florida Democratic Party anticipates reimbursing owners of private aircraft for travel provided to the party's candidates for statewide office. First, the party asks if it were to reimburse such owner "the actual cost of per person commercial air travel for the same or a substantially similar route," is that the amount the party reports to the candidate as an allocable in-kind contribution? The answer is "yes." The travel on the private aircraft is an allocable in-kind contribution by the party to the candidate. The only non-allocable party contributions are polling services, research services, costs for campaign staff, professional consulting services and telephone calls. § 106.08(2)(b), Fla. Stat. (2009). Section 106.055, Florida Statutes (2009), specifies that the value of the in-kind contribution to the candidate's campaign for the private aircraft travel is "the actual cost of per person commercial air travel for the same or a substantially similar route." Therefore, the party must report this amount to the candidate as the value of the in-kind contribution.

Second, with respect to the phrase, “the actual cost of per person commercial air travel for the same or a substantially similar route,” the party asks:

- a. Is there any measure that should be utilized in computing “the actual cost of per person commercial air travel,” such as the “unrestricted coach fare,” or is it appropriate to compute this valuation on the basis of the lowest available fare available to the public?
- b. Is there any measure that should be utilized in determining what constitutes a “substantially similar route?” For example, would travel provided in a private aircraft from Boca Raton to Sanford be a “substantially similar route” to commercial travel from West Palm Beach to Orlando?
- c. Is there any measure that should be utilized in determining what does not constitute a “substantially similar route?”
- d. What is the proper valuation if the travel in a private aircraft which is not on the same or substantially similar route to commercial air travel?

Section 106.055 does not specify any measure for computing “the actual cost of per person commercial air travel.” Therefore, it is appropriate to refer to other areas of the law for guidance. The Florida Commission on Ethics specifies that a gift of transportation in a private airplane is valued at the unrestricted coach fare for purposes of the Code of Ethics for Public Officers and Employees. Fla. Admin. Code R. 34-13.500(4). This rule implements section 112.3148(7)(d), Florida Statutes (2009), which is applicable to candidates upon qualifying. *See* § 112.3148(2)(d), Fla. Stat. (2009). Although an in-kind contribution reported under chapter 106, Florida Statutes, is not a gift for purposes of the Code of Ethics for Public Officers and Employees (*see* § 112.312(12)(b)2., Fla. Stat. (2009)), the Division of Elections views the unrestricted coach fare used by Florida Commission on Ethics as an appropriate basis for commercial air travel valuation under s. 106.055, Florida Statutes (2009).

Section 106.055 also lacks any measure for determining what constitutes a “substantially similar route.” However, this section does appear to contemplate that a “substantially similar route” always will exist. Therefore, the Division suggests that the party calculate the commercial airfare to and from the commercial airports closest to the private aircraft’s departure and arrival cities to determine a “substantially similar route.” Using this approach will always yield a “substantially similar route;” thus, the party’s last sub-question above becomes moot.

#### SUMMARY

When a political party pays a private aircraft owner for private air travel for its candidates, the value of the in-kind contribution to the candidate’s campaign for this travel is “the actual cost of per person commercial air travel for the same or a substantially similar route.” No statutory measure exists for computing “the actual cost of per person commercial air travel;” however, the Division views the unrestricted coach fare as being an appropriate valuation method.

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Section 106.055, Florida Statutes (2009), contemplates that a “substantially similar route” always will exist. The Division suggests that a “substantially similar route” should be based upon the commercial airfare to and from the commercial airports closest to the private aircraft’s departure and arrival cities.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Palmer', with a long horizontal line extending to the right.

Donald L. Palmer  
Director, Division of Elections

cc: Mark Herron, Esq.