



FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KURT S. BROWNING
Secretary of State

February 10, 2011

Mr. Richard Namon, Sr.
5555 Oakwood Lane
Coral Gables, Florida 33156

RE: DE 11-01 Campaign Finance – Self-financed
campaign; raising donations for a charitable
cause.

Dear Mr. Namon:

This letter responds to your request for an advisory opinion regarding proposed actions you desire to take as a Coral Gables City Commission candidate. Because you have questions about compliance with Florida's election laws with respect to your proposed actions, the Division of Elections has the authority to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2010).

You state that you will self-finance your campaign. Instead of requesting contributions from persons or having persons hold fundraisers for your campaign, you will request people to make charitable donations to repair a nationally recognized historic residence within the city and you will also request those persons who would normally hold fundraisers for you to hold fundraising events to raise funds for the same charitable purpose. You will attend such fundraisers and speak about the need for the city to have a funded maintenance plan for city-owned historic properties. You indicate that no donations will pass through your hands and all funds would go into a yet-to-be established trust fund. You further state you are seeking an opinion because city administrators have reservations about the legality of your campaigning to raise funds for a city historical property.

The Division of Elections only has authority to interpret the provisions of Florida's Election Code, chapters 97-106, Florida Statutes (2010); therefore, this opinion limits itself to the legality of your proposed actions as they relate to the Election Code. Candidates may self-finance their own campaigns; however, a self-financed campaign must comply with the campaign finance requirements of chapter 106, Florida Statutes. For example, a self-financed campaign must still have an appointed campaign treasurer, have a designated campaign depository, report all

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contributions and expenditures, and properly dispose of surplus campaign funds pursuant to law, *etc.*

The Election Code does not prohibit a candidate asking persons to contribute to a charitable cause instead of making donations to the candidate's campaign or requesting persons to hold fundraisers for charitable or civic purposes. However, in the event that you or your campaign should receive any of the donated funds, you may not make a contribution to the civic or charitable cause or organization in exchange for political support. § 106.08(5)(c), Fla. Stat. (2010). Also, you should be aware that the definition of contribution includes "contributions in kind having any attributable monetary value in any form, made for the purpose of influencing the results of an election" § 106.011(3)(a), Fla. Stat. (2010).

Your request specifically states that "you will attend [the] events to talk about the need for Coral Gables to have a funded maintenance plan" for its historic properties. This statement essentially reflects that you intend these fundraising events to be a vehicle for getting your message to the electorate. In that regard, you must be careful about someone accepting your specific invitation to host a fundraiser for the historic residence in lieu of hosting a fundraiser for your campaign and allowing you, to the exclusion of other candidates, to speak about the need for the city to fund a maintenance plan for city-owned historic properties. If the host of the fundraiser accepted your specific invitation to hold a fundraiser for repairs to the historic residence instead of raising funds for your campaign and did not act truly independently of your campaign in organizing the fundraiser, your speaking about the city's need to create a historic preservation maintenance fund would constitute an attempt to influence the results of the election. As such, the overhead costs for the fundraiser would have an attributable monetary value to your campaign; therefore, the person(s) putting on such a fundraiser would have to provide you the value of the in-kind contribution and you would have to report the fundraiser as a contribution to your campaign. §§ 106.055 and 106.07, Fla. Stat. (2010). However, if the fundraiser was done independently of your invitation to host the fundraiser, if you advocated only for donations for repairs to the historic residence without advocating any of your campaign platform, or if other candidates have the opportunity to speak at the event, then you would not be receiving any attributable monetary benefit from the event. In these situations, it would be akin to one or more candidates being invited to speak to a civic club about his or her candidacy, which event would not represent an in-kind contribution to the campaign.

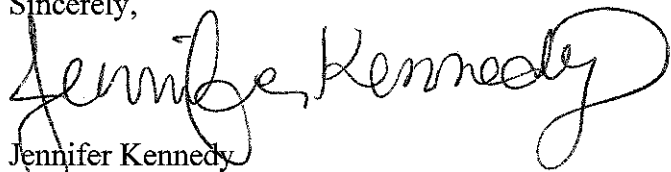
While the Election Code does not preclude a candidate from asking for donations to a charitable cause or organization or asking people to hold fundraisers for charitable purposes, the Division suggests that you coordinate with the city concerning your proposal and the mechanics of setting up the trust fund as these matters are outside the Division's jurisdiction.

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SUMMARY

A candidate may self-finance his or her campaign, but the candidate still must comply with the campaign finance requirements in chapter 106, Florida Statutes. The Election Code does not prevent a candidate from requesting persons to contribute donations directly to a charitable cause or organization or requesting people to hold fundraisers for charitable purposes, *e.g.*, raising funds to preserve a historical residence instead of holding fundraisers for the candidate. If a charitable fundraiser in such situations is truly independent of one's campaign, the fundraiser does not represent an in-kind contribution to the campaign.

Sincerely,

A handwritten signature in black ink that reads "Jennifer Kennedy". The signature is written in a cursive style with a large, looping "J" and "K".

Jennifer Kennedy
Acting Director, Division of Elections