FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

June 10, 2016

Mr. Randall Toler
203 Claire Drive
Seffner, Florida 33584

Re: DE 16-06 Contributions – Limits – § 106.08, Florida Statutes

Dear Mr. Toler:

You and your wife are running for separate seats on the county school board, and you seek an advisory opinion from the Division of Elections on whether each of you may make full use of shared marital funds, without regard to any contribution limits, to finance your respective campaigns. Because you are a candidate seeking an opinion with regard to an action you propose to take, the Division has authority to issue you an advisory opinion pursuant to section 106.23(2), Florida Statutes.

FACTS

You state in your request that both you and your wife are candidates for Hillsborough County School Board. You indicate that you individually earn income that you deposit into your own account and then share with your wife through a transfer of funds into her own separate account. You report your income to the IRS as a married couple filing jointly. You state that you and your wife each have a separate personal checking account and that you also each have a separate campaign account.

You ask whether the contribution limitations in section 106.08(1), Florida Statutes, limit you and your wife from each funding your own respective campaigns from the income that you consider shared marital funds. You indicate that you and your wife intend to finance your respective campaigns as follows: First, you alone will receive the income; next, you will deposit some of the income into your personal checking account and some of the income into your wife's personal checking account; and finally, you will transfer the funds from your personal checking

account into your campaign account, and your wife will transfer the funds from her personal checking account into her campaign account.[1]

ANALYSIS

In Florida, no person may make contributions in excess of $1,000 to a candidate for countywide office. § 106.08(1)(a)(2.), Fla. Stat. However, the $1,000 limit does not apply to "amounts contributed by a candidate to his or her own campaign." *See* § 106.08(1)(b), Fla. Stat.

In your situation, the question is whether funds from your personal checking account that are contributed to your campaign account—and funds from your wife's personal checking account that are contributed to her campaign account—are considered "amounts contributed by a candidate to his or her own campaign," when those funds originate from shared marital funds. As long as the funds contributed to your campaign account and the funds contributed to your wife's campaign account are from joint marital assets, both you and your spouse can consider the contributions "amounts contributed by a candidate to his or her own campaign" pursuant to section 106.08(1)(b), and those funds will not be subject to the $1,000 limit of section 106.08(1)(a).

SUMMARY

Where one spouse receives income that becomes shared marital assets, money from those joint assets may be distributed to separate personal checking accounts for each spouse to use to fund his or her own campaign account. When a candidate contributes personal funds to his or her own campaign account, such contributions are not subject to the $1,000 limit imposed by section 106.08(1)(a).

Respectfully,

Maria I. Matthews, Esq.
Director, Division of Elections

[1] Please be aware that the Division of Elections only has authority to issue advisory opinions with regard to the election laws. The Division cannot opine about the applicability of federal tax law or non-election laws. *See* § 106.23(2), Fla. Stat.