


MEMORANDUM

To: Mayor and City Council

From: Alison Dawley, City Attorney 

Date: June 19, 2020

Re: Campaign Contributions

During the Special Meeting of City Council this past Wednesday, the City Council considered whether to accept a generous donation from Randy and Wendy Fine to fund the July 4th fireworks display. As Randy Fine is running a re-election campaign for his current seat as a member of the Florida House of Representatives, an inquiry was made as to whether the donation would be provided by the Fines (in their personal or business capacity) or by Representative Fine's campaign. I was asked to contact Representative Fine to determine the source of the donation in order to confirm that the donation was not made through his campaign fund. As of this writing, my understanding is that the donation will be made from Representative Fine's campaign fund and will not be made in his personal or business capacity.¹ As such, the donation is subject to Chapter 106 of Florida Statutes, the Florida Campaign Financing laws.

Donations from campaign accounts to the City raise issues to consider for both Representative Fine as well as the City. On the one hand, by statutory definition, a candidate's campaign funds are contributed and expended for the purpose of influencing the results of an election.² A candidate may not make contributions in exchange for political support to any cause or organization established primarily for the public good.³ Traditionally, this prohibition has protected against the appearance of impropriety.

Nevertheless, even when there is no type of quid pro quo agreement to support the candidate, although the candidate may be able to expend the campaign funds that does not necessarily mean the organization may accept the funds. Generally speaking, the City is prohibited by law from advocating in campaigns.⁴ As you may recall from the

¹ Although I spoke briefly with Representative Fine later that same evening, he indicated that his reception was poor (as he was driving through the mountains of North Carolina) and indicated that he would need to call me back when he had better telephone reception. A third party reported to me that Representative Fine confirmed to him that the donation would be paid from his campaign fund.

² §106.011, Fla. Stat.

³ §106.08(5)(c), Fla. Stat. (where the 2002 statutory revision added qualifier that the contribution must not be made *in exchange for political support* in order to protect First Amendment speech of candidates).

⁴ §106.113, Fla. Stat. (prohibiting local governments from expending funds on political advertisements that concern an issue subject to a vote of the electors) See also Dinerstein v. Bucher, 287 So. 3d 639 (Fla. 4th DCA 2020)(indicating that political advertisements are not limited to using "magic words" such as "vote for", "support", "vote against", "defeat" "oppose" or "reject" but instead must be evaluated more

police bond referendum in 2018, the City is prohibited from influencing the results of an election by advocating for a particular position or candidate. Great care was taken in 2018 to be sure the message from the City was purely informational and to avoid even the appearance of advocacy. The City itself could not advocate in the election results.

These two positions, one of the candidate and the other of the City, are difficult to synthesize. As a practical matter, a candidate expending campaign funds must show that the funds were used to influence the election (even when there is not a quid pro quo agreement to do so). And yet the City must show that the same funds were not used to influence the election.

On Thursday morning, this office contacted the Division of Elections for guidance on whether the City could accept the donation from Representative Fine as a sponsor of the fireworks display. Attorney Ashley Davis with the Division raised concerns that the City's acceptance of the donation would potentially violate Florida Campaign Financing laws as a prohibited political advertisement on behalf of Representative Fine. A formal opinion could be requested from the Division of Elections but unfortunately not within the time constraints presenting for this July 4th fireworks display.

Until a formal opinion can be obtained from the Division of Elections, it is my recommendation that the City not accept a donation directly from Representative Fine's campaign fund as sponsor of the fireworks display.

broadly to determine whether the advertisement constituted the functional equivalent of express advocacy as announced by the U.S. Supreme Court in *Citizens United v. Fed. Election Comm'n*).