

Florida House of Representatives

Marco Rubio, Speaker
Office of the General Counsel

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FORMAL OPINION 07-01

To: Representative Gayle Harrell, District 81

Prepared By: Jeremiah Hawkes, General Counsel

Date: February 1, 2007

Re: Solicitation of Funds for Congressional Campaigns

You inquired whether House Rule 15.3(b) prevents members from soliciting funds for their own congressional campaign.

Rule 15.3(b) reads:

A member may neither solicit nor accept any campaign contribution during the 60-day regular legislative session or any extended or special session on the member's own behalf, on behalf of a political party, on behalf of any organization with respect to which the member's solicitation is regulated under s. 106.0701, Florida Statutes, or on behalf of a candidate for the House of Representatives; however, a member may contribute to the member's own campaign.

This rule was passed during the 1994 regular session as House Rule 5.8(b). The only major change between the current rule and that rule is the third provision which bans soliciting “on behalf of any organization with respect to which the member’s solicitation is regulated under s. 106.0701, Florida Statutes.” Section 106.0701 does not apply in this instance as subsection 106.0701(5) makes clear this section does not apply to an individual acting on behalf of his or her campaign. Therefore, for purposes of this opinion, the rule has much the same meaning today as it did then.

The rule has roots in earlier efforts to curtail solicitation by members. The first such effort was in 1989 when the legislature passed Section 106.08(8), Florida Statutes (1989), which provided:

A candidate who is running for legislative office or a statewide office, except a candidate for a vacant office being filled by special election, may not accept or

solicit any campaign contribution during a regular or special session of the legislature.

Chapter 106 is limited to elections to public office as defined in the statute, which are any state, county, municipal, or school or other district office or position which is filled by vote of the electors. Federal offices such as congress are not covered by Chapter 106.

Section 106.08(8) was declared unconstitutional by the Florida Supreme Court in *State v. Dodd*, 561 So.2d 263 (Fla. 1990). The Court however noted that legislators could be prohibited from accepting contributions during session through use of legislative rules. *Ibid* at 266.

Using *Dodd* as a guide the 1994 House amended the rules to prohibit the solicitation of contributions during session. See *Journal of the House of Representatives, February 8, 1994* pp. 7-9. While the rule does not give specific definitions like Chapter 106, the rule uses the same terms as the statute and there is no suggestion that rule was intended to regulate any contributions that are not already regulated by the statute. Indeed the Members indicated that their intent was to have a permissible form of the regulation that is disallowed by *Dodd*. Thus, it follows that the rule also does not apply to federal elections.

There are at least four previous formal House opinions that opine, as this one does, that Members are not prohibited from soliciting funds for federal office during the session. (99-05, 00-01, 00-03, and 00-04) Those opinions have two important distinctions. First they presuppose that the rule is designed to prohibit soliciting for federal campaigns, which as outlined above does not appear to be the case. Second, they conclude that such a prohibition would be preempted by federal law. In reaching this conclusion they rely on *Teper v. Miller*, 82 F.3d 989, (11th Cir. 1996), which held that a Georgia statutory provision which specifically barred sitting legislators who were candidates for federal office from raising money during session was preempted by federal law regulating the solicitation of funds by candidates for federal office. Previous House opinions reasoned that preemption would apply to legislative rules of procedure the same way it does to statutory provisions.

Teper would be binding precedent in Florida because Florida is in the Eleventh Circuit. However, no other court seems to have dealt with the issue since *Teper* and it was not a unanimous decision. Also, there does not seem to be any case that invalidates a legislative rule of procedure because of the preemption doctrine. Parliamentary bodies are given a wide range of discretion when it comes to governing the behavior of their members that can go beyond what can be regulated by statute. If a body did regulate such solicitations through rule, then reliance on *Teper* would be a gamble; both that *Teper* would both be upheld and that federal preemption would be found to apply to legislative rules.

While Rule 15.3(b) does not appear to apply in this instance, Rule 15.3(a) does. Rule 15.3(a) provides:

A member may not accept anything that reasonably may be construed to improperly influence the member's official act, decision, or vote.

The fact that a solicitation was made during session could increase the likelihood that it would be perceived as influencing the member's vote. Members have chosen in the past to act with prudence by not taking any contributions from persons registered to lobby before the House,

allowing others to solicit the funds or by not accepting contributions during session.

Therefore, a Member of the House may solicit funds during session to run for a federal office if he or she is properly qualified.

This opinion is prepared in accordance with House Rule 15.8. Pursuant to that rule this opinion could be subject to revision.

cc: Office of the Speaker
Rules & Calendar Council
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Commission on Ethics
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