OFFICE OF THE ATTORNEY GENERAL

THE CAPITOL

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Reply to:
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ROBERT A. BUTTERWORTH
Attorney General
State of Florida

November 30, 2000

Jeff S. Jordan
Supervisory Attorney
Central Enforcement Docket
General Counsel's Office
Federal Election Commission
Washington, DC 20463

RE: MUR 5144

As I understand your letter to the Attorney General, the FEC believes that the complaint filed by Congressman Weldon relating to the activities of the Sen. Patsy Kurth campaign for Florida's 15th Congressional District "indicates that the State of Florida may have violated the Federal Elections Campaign Act (FECA)...."

A review of Congressman Weldon's attached complaint leads me to the conclusion that the potential violation might involve an allegation that the State "contributed" something of value to the Kurth campaign which was either unreported by that campaign and/or might exceed the limits on "contributions" to congressional campaigns under FECA. The "contribution" at issue seems to be the use of a newsletter, which was allegedly paid for by the state, as a campaign document and the similar use of photographs that were allegedly also prepared for Sen. Kurth's newsletter.

First, I must state that the following discussion is not meant in any way to admit or agree with the allegations in the complaint pending before the FEC. The Attorney General has no knowledge of the validity of the claims made by Congressman Weldon and therefore this Office takes no position as to their merit. The following response is intended only to reply to the assertion in the FEC's November 13 letter that intimates that the State of Florida could be considered to have violated FECA by improperly "contributing" to Sen. Kurth's congressional campaign.

Without waiving any objections to the FEC's assertion of jurisdiction over the activities of a sovereign state, I can respond to your inquiry as follows:

1. It appears that the documents in question were prepared by Sen. Kurth's senate office and were paid for out of her office account. This account is authorized under Section 11.13(4), Fla. Stat., and is to be used for the purpose of providing "an appropriate level of constituent services." No provision in the authorizing statute permits

the funds allocated to this account to be used for campaign expenditures as that term is defined in Section 106.011(4), Fla. Stat.

2. Furthermore, while a legislator can deposit unused campaign funds in the office account under the provisions of Section 106.141(5), Fla. Stat., such funds can only be used for "legitimate expenses in connection with the candidate's public office." The statute then lists certain acceptable uses of the funds which do not include uses that would be campaign "expenditures" under Section 106.011(4), Fla. Stat. In fact, such use of the office funds would be prohibited, Op.Div.Elect., DE 78-44, Oct. 25, 1978.

3. Therefore, since Florida does not permit the use of funds allocated to an elected legislative representative's office account to be used for purposes that would fall within the definition of a campaign "expenditure" under Florida law, it is apparent that the use of the funds for activities which would fall within the ambit of campaign "expenditures" under FECA would be likewise improper.

4. Insofar as Florida does not permit the use of funds allocated to an office account as campaign expenditures it is self-evident that the state cannot have made a "contribution" to any representative if those office funds are actually used for improper campaign-related activities. As you must agree, the unlawful use of funds (state or otherwise) by a candidate does not turn the party whose funds were improperly used into a "contributor" to the campaign of the candidate unless that party acquiesces. If such an improper use of funds actually occurred in the instant proceeding there is no evidence that the state gave such an acquiescence and indeed the state's laws forbid any such activity.

I hope that the foregoing adequately responds to your concerns. If additional information is desired, please do not hesitate to contact me at (850) 414-3300.

Sincerely,

John J. Rimes, III
Assistant Attorney General