OA 4-6-94

IN THE SUPREME COURT OF FLORIDA

FILED
SID J. WHITE
MAR 21 1994
CLERK, SUPREME COURT
By _____ Chief Deputy Clerk

REPUBLICAN PARTY OF FLORIDA, EXECUTIVE COMMITTEE, REPUBLICAN PARTY OF FLORIDA, TOM SLADE, individually, and TOM SLADE, Chairman, Republican State Executive Committee of Florida,

Plaintiffs, Appellants,

v.

CASE NO. 83,249

JIM SMITH, Secretary of State, State of Florida, TOM GALLAGHER, Insurance Commissioner/ Treasurer, State of Florida, GERALD LEWIS, Comptroller, State of Florida and DOROTHY W. JOYCE, Director, Division of Elections,

Defendants, Appellees,

and

BILL JONES, a taxpayer in the State of Florida and Executive Director of Common Cause/Florida,

Intervenor, Appellee.
_____/

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STATEMENT OF THE CASE

On or about August 25, 1993, Appellants filed a Complaint in the Circuit Court of Second Judicial Circuit in and for Leon County, Florida. Appellants' Complaint sought declaratory and supplemental relief, specifically requesting that the Circuit Court declare that Section 106.32(1) is not a lawful appropriation; that it declare Section 106.32(1) as unconstitutional and in violation of Article II, Section 3, and Article III, Section 1, of the Florida Constitution; and that it enjoin Appellees from enforcing or using Section 106.32(1) as a financing source for the Election Campaign Financing Trust Fund ("Trust Fund"). (R. 1-7)[1] Appellees filed an Answer. (R. 8-12)

On November 24, 1993, Appellants filed their Motion For Summary Judgment and Memorandum of Law In Support of the Motion For Summary Judgment. (R. 206-10, 211-31) On November 24, 1993, the parties filed a Joint Stipulation regarding the partial legislative history of Section 106.32(1), Florida Statutes. (R. 14-205) On December 21, 1993, Appellees filed a Response to Appellants' Motion For Summary Judgment, along with a Cross-Motion For Summary Judgment. (R. 232-62) The Motion/Memorandum filed by Appellees contained two exhibits, one a transcript of April 30, 1991, Conference Committee Report regarding the statutes in question, and the other an affidavit from Jana Walling, describing Ms. Walling's

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[1]Citations to the documents in the Record on Appeal shall be by (R.) followed by a page reference and exhibit number, where appropriate. The Plaintiffs, Republican Party of Florida, et al., shall be referred to as Appellants and Defendants, Jim Smith, et al., shall be referred to as Appellees.

understanding of how the Act would finance the Trust Fund. On January 14, 1994, Appellants filed a Reply to Appellees' Response to its Motion For Summary Judgment and to Appellees Cross-Motion For Summary Judgment. (R. 288-306)

Bill Jones, a taxpayer in the State of Florida and Executive Director of Common Cause/Florida, requested and, over Appellants' objection, was permitted to intervene supporting Appellees. (R. 263-66, 284-87) Jones filed a Response to Appellants' Motion. (R. 267-283)

On January 24, 1994, the cross motions for summary judgment were heard before the Honorable F. E. Steinmeyer, III, in Leon County, Florida. After hearing arguments of all counsel, Judge Steinmeyer granted the summary judgment of Appellees, and denied the summary judgment of Appellants. Judge Steinmeyer rendered the Final Judgment on February 1, 1994. (R. 307-09) Judge Steinmeyer concluded there was "no genuine issue as to any material fact" and that the case was "ripe" for decision and further concluded:

> 3. The use or meaning of the word "transferred" in § 106.32(1), Fla. Stat., is ambiguous.
>
> 4. That the Legislature intended to provide funds to the Election Campaign Financing Trust Fund in an amount sufficient to fund qualifying candidates pursuant to the provisions of §§ 106.30-106.36, Fla. Stat.
>
> 5. That §§ 106.32(1) and 106.35, Fla. Stat., constitute the consent of the public to expend public funds and consequently constitute a valid appropriation made by law.
>
> 6. That the use of a formula in an appropriation rather than the use of a

specific dollar amount or a specific funding source is a valid appropriation.

7. Sections 106.32 and 106.35, Fla. Stat., comply with the itemization requirement of Art. III, § 19(b), Fla. Const.

Appellants timely filed their notice of appeal. (R. 310-14) Because this case involves the constitutionality of a statute purporting to finance public campaigns, and because potential gubernatorial candidates may be requesting funds under this statute in the near future, the parties requested the First District Court of Appeal to certify the case to this Court as a matter of great public importance. The First District Court of Appeal did so. This Court accepted jurisdiction.

STATEMENT OF THE FACTS

In 1991, the Florida Legislature adopted amendments to substantive Florida election law. Ch. 91-107, Laws of Fla. (HB No. 2251) ("the Act"). (R. 15, Exh. 3) One of the amendments specifically relates to the public financing of campaigns.

106.32 Election Campaign Financing Trust Fund

(1) There is hereby established in the State Treasury an Election Campaign Financing Trust Fund to be utilized by the Department of State as provided in ss. 106.30 - 106.36. If necessary, each year in which a general election is to be held for the election of the Governor and Cabinet, additional funds shall be transferred to the Election Campaign Financing Trust Fund from general revenue in an amount sufficient to fund qualifying candidates pursuant to the provisions of ss. 106.30 - 106.36.

(2) Proceeds from filing fees pursuant to ss. 99.092, 99.093, and 105.031 shall be deposited into the Election Campaign Financing Trust Fund as designated in those sections.

> (3) Proceeds from assessments pursuant to ss. 106.04, 106.07, and 106.29 shall be deposited into the election campaign financing trust fund as designated in those sections.

Ch. 91-107, § 19, at 892, Laws of Fla. (emphasis added).

Sections 106.30 through 106.36, Florida Statutes, relate directly to the public financing of campaigns for statewide office. Provided candidates abide by certain conditions, see § 106.353, Fla. Stat. (1993), and they meet certain contribution thresholds, see § 106.33, Fla. Stat. (1993), those candidates are entitled to receive potentially millions of dollars from the public coffers to match private contributions. See §§ 106.34-.35, Fla. Stat. (1993). The purpose of the Florida Election Campaign Financing Act is to encourage individuals with less wealth to run for statewide office, and to make candidates less beholden to special interest groups. § 106.31, Fla. Stat. (1993).

A great deal of money may be needed to finance the Act.[2] To provide the necessary money to fund the Act, in 1986 the Florida Legislature created the Election Campaign Financing Trust Fund ("the Trust Fund"). Ch. 86-276, § 1, at 2030-31, Laws of Fla. (R. 14, Exh. 1) It is the financing of the Trust Fund that was the

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[2]For example, to provide matching funds for a single gubernatorial candidate who does not face primary opposition, the State would have to pay $2,575,000 (assuming a gubernatorial candidate receives the campaign contributions allowed) in qualifying matching funds. Further, if other candidates do not abide by spending limits, the State may have to match qualifying candidates in excess of the $5,000,000 expenditure limit. § 106.355, Fla. Stat. (1993). Of course, the precise amount which will be needed in 1994 will not be known until the money is disbursed to qualifying candidates.

subject of the lawsuit and Appellants' Motion For Summary Judgment filed below.

Prior to the 1991 amendments, the Trust Fund was to be financed by legislative appropriation. "Each year in which a general election is to be held for the election of the Governor and Cabinet, the Legislature shall appropriate to the Election Campaign Financing Trust Fund from general revenue an amount sufficient to fund qualifying candidates pursuant to the provisions of this act." Ch. 86-276, § 1, at 2030-31, Laws of Fla. In 1986, the Legislature appropriated $3 million for the Trust Fund. See Joint Stipulation (R. 15, Exh. 2 at 2) House of Representatives Committee on Ethics and Elections, Final Bill Analysis and Economic Impact Statement, HB 2251, May 14, 1991, Florida State Archives, Series 19, Carton 2304. In 1987, the Legislature removed the appropriation, returned the $3 million to general revenue, and did not make any subsequent, specific dollar appropriations. Id. (Appellees argue that Section 106.32(1) as amended in 1991 is an appropriation.)

The 1991 Legislature changed the campaign financing scheme. The amendment process began with a draft bill in the House of Representatives Committee on Ethics and Elections. PCB EE 91-01 proposed eliminating "the requirement that the Legislature appropriate funds from general revenue to fund the Election Campaign Financing Trust Fund." This Committee recommended that funds collected for fictitious name registrations be deposited in the Trust Fund rather than the Corporations Trust Fund, and the fines received pursuant to Chapter 106 would continue to be

deposited in the Trust Fund. It was estimated that "the funds generated will provide the Election Campaign Financing Trust Fund with sufficient funds, over a full four-year period, to fully fund participating candidates." (R. 16, Exh. 4 at 1, 3-4) House of Representatives Committee on Elections and Ethics, Bill Analysis and Economic Impact Statement, PCB EE 91-01, February 15, 1991, Florida State Archives, Series 19, Carton 2304.

The House Committee on Ethics and Elections proposed to amend PCB EE 91-01 to provide that the first 4 million dollars of funds from the .3% service charge on specified trust funds be directed to the Trust Fund rather than the Agency Budget Sunset Trust Fund. The remainder was to be deposited in the General Revenue Fund and the Sunset Fund was to receive no further funding from the service charge. Fines received pursuant to Chapter 106 would continue to be deposited in the Trust Fund. (R. 16, Exh. 5 at 1) House of Representatives Committee on Ethics and Elections, Bill Analysis and Economic Impact Statement, March 5, 1991, Florida State Archives, Series 19, Carton 2304.

On or about March 14, 1991, the House Committee on Finance and Taxation proposed amending what was now HB 2251, by replacing the .3% service charge with a .1% sales tax on advertising, and providing that Working Capital Fund moneys would be used if the Trust Fund were to "run out of funds." On the House floor, the advertising tax proposal failed, but the Working Capital Fund provision was adopted. The resulting bill that was engrossed and sent to the Senate retained the .3% service charge, resurrected the

appropriation language (now only "if necessary"), and added the backup Working Capital Fund provision, to wit:

> If necessary, each year in which a general election is to be held for the election of the Governor and Cabinet, the Legislature shall appropriate additional funds to the Election Campaign Financing Trust Fund from general revenue in an amount sufficient to fund qualifying candidates pursuant to provisions of ss. 106.30-106.36. In the event such appropriated moneys in the trust fund are insufficient to fully fund qualifying candidates, sums sufficient to fully fund such candidates are hereby appropriated for transfer to the fund from the Working Capital Fund.

(R. 16-17, Exh. 6 at 155, 206) Journal of the House of Representatives, March 14, 1991; (R. 16-17, Exh. 7) House of Representatives as further revised by the Committee on Appropriations, Bill Analysis and Economic Impact Statement, March 14, 1991, Florida State Archives, Series 19, Carton 2171; (R. 16-17, Exh. 8 at 21) HB 2251, Second Engrossed.

In April of 1991, the Senate Committee on Finance, Taxation and Claims amended HB 2251, Second Engrossed, to remove the .3% service charge provision and the Working Capital Fund backup, and resurrected the provision to proportionally distribute available funds should "appropriated" moneys be insufficient to fully fund candidates, and added sections 106.32(2) and (3). (R. 17, Exh. 9 at 25) Senate Committee on Finance, Taxation and Claims, Bill Vote Sheet, HB 2251, April 17, 1991. See also (R. 17, Exh. 10 at 823, 827) Journal of the Senate, State of Florida, April 22, 1991.

On April 22, 1991, HB 2251, as amended by the Senate Committee on Finance, Taxation and Claims, passed on the floor of the Senate and read in part:

> If necessary, each year in which a general election is to be held for the election of the Governor and Cabinet, the Legislature may appropriate additional funds to the Election Campaign Financing Trust Fund from general revenue in an amount sufficient to fund qualifying candidates pursuant to the provisions of ss. 106.30-106.36. In the event such appropriated moneys are insufficient to fully fund qualifying candidates, available funds shall be distributed on a proportional basis based on total available funds.

(R. 18, Exh. 10 at 827) Journal of the Senate, State of Florida, April 22, 1991. See also (R. 18, Exh. 9 at 25).

On April 30, 1991, representatives of the Senate and House of Representatives issued their Conference Committee report on HB 2251. At page three of the report, the Conference Committee made reference to section 19 and stated: "Provides for transfer from the General Revenue if funds in the Election Campaign Financing Trust Fund are insufficient to fully fund candidates." (R. 18, Exh. 11) Conference Committee Report on HB 2251, April 30, 1991, Florida State Archives, Series 19, Carton 2304. The Conference Committee compromise was adopted as the final bill in both the Senate and House which provided, in part:

> If necessary, each year in which a general election is to be held for the election of the Governor and Cabinet, additional funds shall be transferred to the Election Campaign Financing Trust Fund from general revenue in an amount sufficient to fund qualifying candidates pursuant to the provisions of ss. 106.30-106.36.

(R. 18, Exh. 12 at 1609) Journal of the Senate, State of Florida, May 1, 1991; (R. 18, Exh. 13 at 1631) Journals of the Florida House of Representatives, April 30, 1991. Additionally, a transcript of a discussion of members of the House of Representative's is included in this record. (R. 253-54) Representative Stone states in part: "O.K., but on that we are guaranteed that if this bill stays the way it is today until the 1994 elections cycle and we have a Governor's race, we have Cabinet races and we have four million dollars in the public financing, but we need ten million or twenty million dollars then we've got to take it out of gr the way this bill's written now." Representative Goode responded: "You are correct, Rep. Stone." (R. 254)

Now, Sections 106.32(2) and (3), Florida Statutes, provide for six specific sources of revenue to be deposited directly into the Trust Fund. These are: one-third of the filing fees required by Section 99.092; one-third of the municipal candidate qualifying fees required by Section 99.093; one-third of filing fees for candidates for judicial office required by Section 105.031; an assessment on contributions to committees of continuous existence pursuant to Section 106.04(4)(b)2.; an assessment on contributions to candidates pursuant to Section 106.07(3)(b); and an assessment on contributions to political parties pursuant to Section 106.29(1)(b). This Court struck the assessments provided for by subsections 106.04(4)(b)2., 106.07(3)(b), and 106.29(1)(b) as unconstitutional because they abridged free speech and freedom of association rights. State v. Republican Party of Florida, 604

So. 2d 477 (Fla. 1992). Accordingly, the only direct financing of the Trust Fund comes from filing fees pursuant to Sections 99.092, 99.093, and 105.031, Florida Statutes (1993).

SUMMARY OF THE ARGUMENT

The crucial issue for this Court to decide is whether the 1991 Legislature lawfully appropriated 1994 general revenue dollars to be expended and disbursed to qualifying candidates during the general election to be held in the fall of 1994. The Legislature can, and in the past has, appropriate money from the General Revenue Fund in order to partially fund the Election Campaign Financing Trust Fund. In 1986, the Legislature appropriated three million dollars, but, in 1987 returned the money to the General Revenue Fund. In like manner, the 1994 Legislature could appropriate money to assist qualifying candidates. The issue is not whether it can lawfully appropriate money. Rather, the issue is whether it could do so in 1991 with 1994 funds.

Section 106.32(1) is not an appropriation by the statutory definition. The Legislature did not specify in 1991 "the amounts authorized" to be spent in 1994, the year in which the next general election will be held. Section 106.32(1) is not based on any legislative budget or based upon legislative findings of necessity. Because Section 106.32(1) is not an appropriation and Chapter 91-107 is not an appropriations act, they cannot be utilized as authorization to transfer money into the Trust Fund in 1994. Section 106.32(1) is inconsistent with controlling provisions of Chapter 215 and 216, Florida Statutes, and is invalid. See §§

215.32(2)(b)3. and 216.351, Fla. Stat. (1993). Thus, the Comptroller may not issue any warrant because there has been no appropriation made by law.

The Legislature did not appropriate any money pursuant to Section 106.32(1). The Legislature authorized an improper "transfer" of money from general revenue to the Trust Fund, if necessary, in 1994. The Legislature was well aware of the different meanings to be ascribed to the words "appropriate" and "transfer," for both of these terms were considered by the 1991 Legislature in various forms of proposed amendments to Section 106.32(1). The legislative history evidences the Legislature's understanding of these terms and specific use of the term "transfer" as opposed to the use of the word "appropriate." Further, the statutory transfer provisions as opposed to appropriation provisions of Chapter 215 do not apply in this case. See §§ 215.18 and 215.32(2)(c)2., Fla. Stat. (1993).

Additionally, Section 106.32(1) cannot be a continuing appropriation because it is not an appropriation. A valid continuing appropriation must have a separate financing source. Moneys allocated from filing fees are a separate funding source for the Trust Fund. However, any additional money needed in 1994 will not originate from a separate source of funding. The money will come from general revenue, the general repository of state money.

Then too, the trial court's reliance on the "formula," which supposedly transforms Section 106.32(1) into a valid appropriation, is misplaced. The only "formula" alluded to is set forth in

Section 106.35 which provides that qualifying candidates are entitled to a distribution of matching contributions. This does not transform Section 106.32(1) into a valid appropriation or valid itemization pursuant to Article III, Section 19(b) of the Florida Constitution. A specific amount can only be identified at the time of distribution to the qualifying candidate. Also, notwithstanding this "formula," the Legislature must appropriate money consistent with the statutory definitions in order for there to be a lawful appropriation.

Also, in November of 1992, the people of the State of Florida approved Article III, Section 19(b) of the Florida Constitution. Effective July 1, 1994, it requires that "appropriation bills passed by the legislature shall include an itemization of specific appropriations that exceed one million dollars ($1,000,000) in 1992 dollars." Because all or part of the money which may be needed to fund the Trust Fund will be expended and disbursed after July 1, 1994, this constitutional provision controls. Thus, any amount needed in excess of one million dollars in 1992 dollars may not be expended and disbursed on or after July 1, 1994, because there is no itemization of any specific appropriations in Section 106.32(1).

Finally, Section 215.32(2)(b)1., Florida Statutes (1993), provides in part that trust funds shall consist of moneys received by the state which under law or under trust agreement are segregated for a purpose authorized by law. However, there is no money in the General Revenue Fund segregated to be appropriated or transferred to the Trust Fund. Thus, no money may be transferred

from general revenue or the General Revenue Fund to finance the Trust Fund.

The trial court erred in concluding that Section 106.32(1), Florida Statutes is a valid appropriation.

ARGUMENT

I. THE TRIAL COURT ERRED IN GRANTING APPELLEES' MOTION FOR SUMMARY JUDGMENT AND CONCLUDING THAT SECTION 106.32(1) IS A VALID APPROPRIATION

The trial court properly determined that there were no genuine issues as to any material fact and that the case was ripe for adjudication. However, the trial court erred in concluding that Section 106.32(1) is a valid appropriation. While the trial court's Final Judgment comes to this Court clothed with the presumption of correctness, the trial court's ruling is first and foremost based upon a legal interpretation as opposed to an application of law to disputed facts. Thus, this Court is free to make an independent determination of the legality of Section 106.32(1).

A. SECTION 106.32(1) DOES NOT LAWFULLY APPROPRIATE MONEY TO THE TRUST FUND

1. Section 106.32(1) is not an appropriation by statutory definition.

> All moneys received by the state shall be deposited in the State Treasury unless specifically provided otherwise by law and shall be deposited in and accounted for by the Treasurer and the Department of Banking and Financing within the following funds, which funds are hereby created and established:

(a) General Revenue Fund.
(b) Trust funds.
(c) Working Capital Fund.

§ 215.32(1), Fla. Stat. (1993) (emphasis added).[3] See also Fla. Admin. Code R. 3A-10.010. State funds so collected are released by warrants issued by the Comptroller of the State of Florida. "No warrant shall issue until same has been authorized by an appropriation made by law. . . ." § 215.35, Fla. Stat. (1993) (emphasis added). See also Art. VII, § 1(c), Fla. Const. ("No money shall be drawn from the treasury except in pursuance of appropriation made by law.")[4] An appropriation is "a legal authorization to make expenditures for specific purposes within the amounts authorized in the appropriations act." § 216.011(1)(b), Fla. Stat. (1993) (emphasis added). An appropriations act is "the

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[3]In 1945, the Legislature created the so-called Five Fund Act, Chapter 22833, Laws of Florida. All money deposited in the State Treasury was required to be segregated into the five funds, including the General Revenue Fund and Trust Fund. Id. at § 3, p. 758. The Five Fund Act was amended in 1959 in part to create a sixth fund known as the Working Capital Fund. See Ch. 59-257, § 1, at 907, Laws of Fla.; see also Ch. 59-91, Laws of Fla. The Legislature recognized that there might be a deficit in the General Revenue Fund in 1959 and further recognized "that this is an unsound fiscal condition and should be balanced as nearly as possible" and that "the correction of the condition is best remedied by creating a separate state revolving fund rather than shift the time at which taxes are collected." Ch. 59-257, Whereas Clauses, at 906, Laws of Fla.

[4]"The object of a constitutional provision requiring an appropriation made by law as the authority to withdraw money from the state treasury is to prevent the expenditure of the public funds already in the treasury, or potentially therein from tax sources provided to raise it, without the consent of the public given by their representatives in formal legislative acts." State ex rel. Kurz v. Lee, 163 So. 859, 868 (Fla. 1935).

authorization of the Legislature, based upon legislative budgets[5] or based upon legislative findings of the necessity for an authorization when no legislative budget is filed, for the expenditure of the amounts of money by an agency, the judicial branch, and the legislative branch for the stated purposes in the performance of the functions it is authorized by law to perform." § 216.011(1)(c), Fla. Stat. (1993) (emphasis added).

Under the above definitions of appropriation and appropriations act,[6] the transfer purportedly authorized by the amendatory language to Section 106.32(1), Florida Statutes, is not an appropriation. Therefore, the money cannot be released from the General Revenue Fund pursuant to Sections 215.32(2)(a), Florida

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[5]"'Legislative budget' means a request to the Legislature, filed pursuant to s. 216.023, or supplemental detailed requests filed with the Legislature, for the amounts of money such agency or branch believes will be needed . . . to perform." § 216.011(1)(t), Fla. Stat. (1993) (emphasis added).

[6]These definitions were enacted into law in 1961. Ch. 61-401, § 1, Laws of Fla. The Title to Chapter 61-401 stated in part: "AN ACT relating to fiscal affairs of state government and legislative spending philosophy." Id. Title. See also Ch. 63-514, Title, Laws of Fla. ("AN ACT relating to general and miscellaneous appropriations." In 1963, the Legislature added to the list of definitions). The preface to the new definitions stated: "218.011 Definitions. - For the purpose of fiscal affairs of the state, appropriations acts, legislative budgets, and operating budgets, the following words shall have the meanings indicated." Id. at § 1. Chapter 282 dealt with "general and miscellaneous appropriations." See Ch. 282, Fla. Stat. (1961). Section 282.021 was repealed in 1969. Ch. 69-106, § 31, at 572, Laws of Fla. However, in 1969, the Legislature essentially re-enacted the same definitions. Id. at 553-54. These definitions appeared as Section 216.011, Florida Statutes (1969) as they appear today. Surely, the purported transfer of money to the Trust Fund from the General Revenue Fund impacts and relates to the fiscal affairs of the state. Also, had the Legislature intended to restrict the scope of the definitions, they could have done so, but did not.

Statutes (1993) and 215.35, Florida Statutes (1993), the only method of releasing money from the General Revenue Fund.[7]

The 1991 Act does not lawfully appropriate money to finance the Trust Fund because it does not meet the definition of an appropriation. In order to constitute an appropriation, legislative authorization to spend money must contain limits. See § 216.011(1)(b), Fla. Stat. (1993); see also § 216.221(1), Fla. Stat. (1993) ("All appropriations shall be maximum appropriations, based upon the collection of sufficient revenues to meet and provide for such appropriations."). The legal authorization to spend must specify "the amounts authorized" to be spent.[8] The

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[7]There are two exceptions to this rule, which are discussed at pages 20-23, infra.

[8]Appellees' argued below that "the Act provides a basis for ascertaining the 'amount' of funds required and consequently is sufficiently definite and certain to meet the statutory definition. Defendants [Appellees] submit that formulas that provide a basis for ascertaining the amount of an appropriation meet the § 216.011(1)(b), Fla. Stat., definition of appropriation. Florida law does not require that the amount be a sum certain as Plaintiff's [Appellants] contend." (R. 243) The trial court agreed with Appellees' assertion and concluded that "the use of a formula in an appropriation rather than the use of a specific dollar amount or a specific funding source is a valid appropriation." (R. 308) Qualifying candidates are entitled to receive a matching contribution distribution from the Trust Fund. However, the matching contribution "formula" does not transform Section 106.32(1) into a valid appropriation. The Legislature has created, by substantive law, allocation formulas. See, e.g., § 236.081, Fla. Stat. (1993). However, the allocation formula is not an appropriation. Each year, the Legislature still must appropriate money which then will be distributed pursuant to the substantive law allocation provisions unless those allocation provisions are modified by substantive law. See, e.g., Department of Education v. School of Collier, 394 So. 2d 1010 (Fla. 1981). Without annual appropriations, the allocation formulas mean nothing. Likewise, the distribution of matching contributions set forth in Section 106.35, Florida Statutes (1993), is not an appropriation, nor does it cause Section 106.32(1) to be an

1991 Act does not contain this necessary limitation. Instead, it merely provides that "additional funds shall be transferred to the [trust fund] from general revenue in an amount sufficient to fund qualifying candidates . . . " Ch. 91-107, § 19 at 892, Laws of Fla. (emphasis added).

An appropriation cannot be made in this manner. Without any set limitations on expenditures, the legislature cannot consider how much revenue must be raised to cover state expenditures.[9] This may not seem a critical issue when considering only the financing scheme for the Trust Fund, but consider the implications if the legislature attempted to "appropriate" money in this manner for all state agencies, state programs or state necessities. Appropriations acts would be, in effect, "The Save the Manatee Program is hereby appropriated sufficient money to serve its purpose in 1994," "State and local libraries are hereby appropriated enough money to run in 1994," "The Election Campaign Financing Trust Fund is hereby appropriated enough money to disburse to candidates in 1994," etc. There would be no method to the madness. The legislature would have absolutely no idea how much revenue would need to be raised, and the treasury would inevitably run dry.

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appropriation as defined by law. This is especially so because "the amounts authorized" are unknown until disbursed to the qualifying candidate.

[9]"'Expenditure' means the creation or incurring of a legal obligation to disburse money." § 216.011(1)(k), Fla. Stat. (1993). "'Disbursement' means the payment of an expenditure." § 216.011(1)(i), Fla. Stat. (1993).

This in turn would lead to a race to the treasury by all department and agency heads and anyone in charge of spending appropriated funds, to ensure that each of those get their money before there was no money left or before a deficit is declared. The purpose of the limitation required by the definition of appropriation is to avoid this problem. The 1991 Act's failure to meet this definition illustrates that it is not an appropriation.

The statutory definition of "appropriations act" also supports the conclusion that the Act is not a lawful appropriation. This definition requires that legislative authorization for the expenditure of state funds be based upon legislative budgets. The purported transfer's authorization took place in 1991. The money will not be needed until the 1994-95 fiscal year. The 1991 legislative action could not have been based on the 1994-95 legislative budgets, nor could it have been based upon a need in 1994. Similarly, because the money was not to have been spent in the 1991-92 fiscal year, the 1991 Legislature did not, and could not, consider the effect of the "transfer" on 1994 legislative budgets. The failure to base the purported "appropriations act" on legislative budgets or current need violates the plain language of Sections 216.011(1)(b) and (c) and 215.32(2)(a), and the Comptroller is therefore barred by Section 215.35, Florida Statutes (1993) from issuing a warrant to release the money from the General

Revenue Fund to the Trust Fund. See §§ 215.32(2)(b)3. and 216.351, Fla. Stat. (1993)[10]

2. The 1991 Legislature intended to transfer, not appropriate, money from the General Revenue Fund.

The plain language of the amendatory language must also be taken into account in determining its legality. Prior to the 1991 changes, Section 106.32(1), Florida Statutes, provided that the Legislature "shall appropriate" the necessary money to the trust fund. In 1991, the Legislature struck the language that "the Legislature shall appropriate" and added the language that "additional funds shall be transferred." Ch. 91-107, § 19, at 892, Laws of Fla. (emphasis added). The Legislature must be presumed to know the difference between a transfer and an appropriation;[11] it is beyond reason to interpret the transfer to be an appropriation.[12] There is statutory authority for "transfers" only under certain circumstances.

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[10]Section 216.351, Florida Statutes (1993), states: "Subsequent inconsistent laws shall supersede this chapter only to the extent that they do so by express inference to this section." See, e.g., Ch. 93-185, §§ 9, 22-24, 43-44, Laws of Fla. Appropriation Implementation Act. See also footnotes 13 and 18, infra and argument at Section C., infra at 32-36.

[11]"In making material changes in the language of a statute, the Legislature is presumed to have intended some alteration of the law unless the contrary is clear from all the enactments on the subject." 49 Fla. Jur. 2d Statutes § 134 (1984).

[12]The word "transferred" is not ambiguous as found by the trial judge. See (R. 308; Final Judgment, ¶ 3). "Transfer" means "to convey from one person, place, or situation to another." Webster's Ninth New Collegiate Dictionary at 1253 (1985). Also, as noted herein, the Legislature has provided specific guidelines for "transfers" of money as opposed to "appropriations" of money.

> Whenever there exists in any fund provided for by s. 215.32 a deficiency which would render such fund insufficient to meet its just requirements, and there shall exist in other funds in the State Treasury moneys which are for the time being or otherwise in excess of the amounts necessary to meet the just requirements of such last-mentioned funds, the Administration Commission, with the concurrence of the Governor, may order a temporary transfer of moneys from one fund to another in order to meet temporary deficiencies in a particular fund without resorting to the necessity of borrowing money and paying interest thereon. The fund from which any money is temporarily transferred shall be repaid the amount transferred from it not later than the end of the fiscal year in which such transfer is made, the date of repayment to be specified in the order of the Administration Commission.

§ 215.18, Fla. Stat. (1993).

If anything, the 1991 amendatory language to Section 106.32(1), Florida Statutes, must be interpreted to be an attempt at such a transfer. However, as a matter of law, such a transfer is impossible. In light of State v. Republican Party of Florida, 604 So. 2d 477 (Fla. 1992), the Trust Fund cannot suffer a temporary deficiency. With its sole other funding coming from a percentage of filing fees, and with the prospect of paying out millions of dollars per election year to qualifying candidates, the Trust Fund will never be able to pay back any other funds from which money was transferred, especially because the money must, by law, be paid back within the same fiscal year. See § 215.18, Fla. Stat. (1993). The Trust Fund will have already pledged all of its available funds to qualifying candidates before it needs to borrow money from other funds, and will receive very little, if any,

additional funds from filing fees during that fiscal year. Therefore, pursuant to the plain language of Section 215.18, Florida Statutes (1993), no money may be transferred from any other funds to the Trust Fund.

There is one other type of transfer that is authorized by Florida law. "Whenever the Governor determines that revenue collections in the General Revenue Fund will be insufficient to meet General Revenue Fund appropriations, he shall certify the amount of the deficit and transfer up to the amount specified in the General Appropriations Act from the Working Capital Fund to the General Revenue Fund. . . ." § 215.32(2)(c)2., Fla. Stat. (1993). See also § 216.292(5), Fla. Stat. (1993) ("Any transfers from the Working Capital Fund to the General Revenue Fund may be approved provided such transfers were identified or contemplated by the Legislature in the original approved budget" (emphasis added); § 216.301(1)(c), Fla. Stat. (1993) ("Each department and the judicial branch shall maintain the integrity of the General Revenue Fund. Appropriations from the General Revenue Fund contained in the original approved budget may be transferred to the proper trust fund for disbursement") (emphasis added); § 216.011(1)(w), Fla. Stat. (1993) ("'Original approved budget' means the approved plan of operation of any agency or of the judicial branch consistent with the General Appropriations Act or special appropriations acts.") The money needed to finance the Trust Fund cannot be legally transferred under Section 215.32(2)(c)2. Subsection 215.32(2)(c)2., Florida Statutes (1993), presumes that the revenue

collections short fall is based on the budget established for each particular fiscal year. The statute is not intended to create a fund for expenses not considered by the current Legislature. It must be read in pari materia with the other statutes set forth in Chapters 215 and 216. For example, "[t]he Governor shall recommend revenues for the funds provided for in s. 215.32. The recommended revenues shall be sufficient to fund his recommended appropriations." § 216.165, Fla. Stat. (1993) (emphasis added). Thus, the Governor and Legislature do not take other expenses into account.

The transfer provision for moving money from the Working Capital Fund to the General Revenue Fund is only intended to make up for deficits in expected revenues in a given fiscal year, not to make up additional financing for items not contemplated in the current legislative budget or current fiscal year General Revenue Fund Appropriations Acts. Given that there are no other Florida Statutes authorizing the transfer of money from the General Revenue Fund to a trust fund, the amendatory language to Section 106.32(1), Florida Statutes (1993), does not provide a legal vehicle through which to finance the inevitable deficit in the Trust Fund.[13]

Then too, the legislative history of the Act illustrates that the Legislature expressly considered several methods of appropriating money to the Trust Fund, but chose not to do so. The

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[13]Section 106.32(1) is inconsistent with the cited provisions of Chapters 215 and 216, Florida Statutes. See, e.g., §§ 216.351, and 215.32(2)(b)3., Fla. Stat. (1993). Therefore, to the extent it does not comport with current appropriations law it is not legal.

House Committee on Ethics and Elections recommended in the first amendments to the Trust Fund that funds from fictitious name registrations be deposited into the Trust Fund rather than the Corporations Trust Fund. The Committee estimated that "the funds generated will provide the Election Campaign Financing Trust Fund with sufficient funds, over a full four-year period, to fully fund participating candidates." (R. 16, Exh. 4 at 1, 3-4) House of Representatives Committee on Ethics and Elections, Bill Analysis and Economic Impact Statement, PCB EE 91-01, February 15, 1991, Florida State Archives, Series 19, Carton 2304. PCB EE 91-01 eliminated "the requirement that the Legislature appropriate funds from general revenue to fund the Election Campaign Financing Trust Fund." Id. at p.4. Had this version of the amendment been passed, the appropriation would have at least met the limitation requirement of the definition of appropriation. The appropriation would have been limited by the amount of revenue generated by fictitious name registrations. However, this amendment was not adopted by the Legislature.

The House Committee on Ethics and Elections sought another way to finance the Trust Fund. In March, it recommended, pursuant to PCB EE 91-01, that the .3% service charge on certain trust funds be appropriated directly to the Election Campaign Financing Trust Fund. That recommendation would have appropriated up to four million dollars per year to the Trust Fund. (R. 16, Exh. 5 at 1) House of Representatives Committee on Ethics and Elections, Bill Analysis and Economic Impact Statement, PCB EE 91-01, March 5,

1991, Florida State Archives, Series 19, Carton 2304. Once again, this recommendation, had it been adopted, may have been a lawful appropriation because it would have been limited to the amount of revenue generated by the service charge on trust funds. Once again, the proposal was not adopted.

Later that same month, the House Committee on Finance and Taxation sought to amend the bill (now officially House Bill 2251), by replacing the .3% service charge on trust funds with a .1% sales tax on advertising. This proposal would have added a .1% sales tax on all advertising in the State of Florida and would have directed the revenues to the Trust Fund. At that time, the Committee also considered the potential for the Trust Fund running out of money, and recommended that money be taken from the Working Capital Fund in that event. (R. 16-17, Exh. 7) House of Representatives, as further revised by the Committee on Appropriations, Bill Analysis and Economic Impact Statement, HB 2251, March 14, 1991, pages 1 and 10, Florida State Archives, Series 19, Carton 2171. The advertising tax proposal failed in the House. (R. 16-17, Exh. 6 at 155) Journal of the House of Representatives, March 14, 1991. However, the House adopted the provision for taking money out of the Working Capital Fund when needed, id. at pp.155 and 206, to wit:

> If necessary, each year in which a general election is to be held for the election of the Governor and Cabinet, the Legislature shall appropriate additional funds to the Election Campaign Financing Trust Fund from general revenue in an amount sufficient to fund qualifying candidates pursuant to provisions of ss. 106.30-106.36. In the event such

> appropriated moneys in the trust fund are insufficient to fully fund qualifying candidates, sums sufficient to fully fund such candidates are hereby appropriated for transfer to the fund from the Working Capital Fund.

(R. 16-17, Exh. 8 at 21) HB 2251, Second Engrossed.

The resulting bill was engrossed and sent to the Senate. (R. 16-17, Exh. 6 at 207) That bill retained the prior provision for the .3% service charge on trust funds to be used to finance the Trust Fund, and resurrected the "appropriation" language, with the exception that the bill only required money to be appropriated "if necessary." The bill also specifically attempted to appropriate ("for transfer") money from the Working Capital Fund in the event the Trust Fund was inadequately financed. (R. 16-17, Exh. 8 at 21) HB 2251, Second Engrossed.

In April, the Senate Committee on Finance, Taxation, and Claims, amended House Bill 2251 to remove the portion that appropriated the .3% service charge on trust funds to finance the Trust Fund. The Committee also amended the bill to provide that the appropriation of money from general revenue to the Trust Fund would be in the current legislature's discretion, to wit: "If necessary, . . . the Legislature may appropriate additional funds . . . ." Finally, and possibly most importantly, the Senate Committee removed the provisions in House Bill 2251 that appropriated money from the Working Capital Fund to the Trust Fund

when not enough money was available.[14] (R. 17, Exh. 9 at 25) Senate Committee on Finance, Taxation and Claims, Bill Vote Sheet and HB 2251 Senate Committee Amendment April 17, 1991. House Bill 2251, as amended by the Senate Committee, passed on the floor of the Senate, (R. 17, Exh. 10 at 827) Journal of the Senate, April 22, 1991, to wit:

> If necessary, each year in which a general election is to be held for the election of the Governor and Cabinet, the Legislature may appropriate additional funds to the Election Campaign Financing Trust Fund from general revenue in an amount sufficient to fund qualifying candidates pursuant to the provisions of ss. 106.30-106.36. In the event such appropriated moneys are insufficient to fully fund qualifying candidates, available funds shall be distributed on a proportional basis based on total available funds.

The Conference Committee compromise between the Senate and House resulted in the final bill, which is the subject of this lawsuit. (R. 18, Exh. 11) Conference Committee Report on HB 2251, April 30, 1991, Florida State Archives, Series 19, Carton 2304; (R. 18, Exh. 12 at 1609) Journal of the Senate, State of Florida, May 1, 1991; (R. 18, Exh. 13 at 163) Journals of the Florida House of Representatives, April 30, 1991.

Based upon the foregoing, it is clear that the Legislature considered and rejected several different funding mechanisms and sources of funds for future funding of the Trust Fund. The

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[14]The Legislature specifically rejected appropriating or transferring money from the Working Capital Fund to the General Revenue Fund. Thus, pursuant to Section 216.292(5), Florida Statutes, no transfer may occur.

Legislature evidently knew how to appropriate money for the particular purpose, but chose not to do so. The money cannot be transferred in 1994, without the specific authorization of the current Legislature, simply because the Trust Fund is empty. Instead, it must be filled by the affirmative act of the current Legislature.

B. THE ACT DID NOT CREATE A LAWFUL CONTINUING APPROPRIATION

The defects mentioned in Section I.A., supra, also prevent the 1991 Act from being a lawful "continuing appropriation." See § 216.011(1)(g), Fla. Stat. (1993). If the Act does not lawfully appropriate money, then the Act cannot be considered a lawful continuing appropriation.

Also, the legality of "continuing appropriations" in excess of $1 million has been limited by Article III, Section 19(b) of the Florida Constitution, passed by the Florida electorate in November 1992. ("Substantive bills containing appropriations shall also be subject to the itemization requirement mandated under this provision and shall be subject to the governor's specific appropriation veto power described in Article III, Section 8.") Effective July 1, 1994, after which some if not all money will need to be transferred to the Trust Fund, all appropriations bills must itemize specific expenditures of more that $1 million in 1992 dollars.[15] The Legislature cannot avoid this requirement simply because the Act was passed in 1991. See generally State v.

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[15]See footnote 8, supra.

Division of Board of Finance of the Department of General Services, 278 So. 2d 614, 617 (Fla. 1973). The 1994 Legislature must address the need to finance the Trust Fund, and must abide by the terms of Article III, Section 19. See generally, Monington v. Turner, 251 So. 2d 872, 875 (Fla. 1971) (" . . . [T]he Constitution is a limitation upon legislative power, not a grant.") (citation omitted)). Because this will require specific legislative action, the 1991 Act does not lawfully appropriate the necessary moneys to finance the Trust Fund.

Appellants concede that this Court has addressed several instances involving continuing appropriations, and has upheld them. However, the Legislature's 1991 attempt to finance the Trust Fund is not a valid continuing appropriation. In each of the cases, this Court has permitted continuing appropriations. However, the appropriations have not been made from general revenue, but from specific sources of revenue.

Appellees rely heavily on case law authored by this Court from 1903, State v. Southern Land & Timber Company, 33 So. 999 (Fla. 1903) through 1946, State v. Lee, 27 So. 2d 84 (Fla. 1946). See Defendants' (Appellees') Response to Plaintiffs' (Appellants') Motion for Summary Judgment. (R. 235-37, 240, 243-47) As a general rule during that time, this Court opined that the use of the specific words "appropriate" or "appropriation" was not essential to comply with the constitutional mandate that funds may be withdrawn from the treasury only "in pursuance of appropriation made by law." See Art. VII, § 1.(c), Fla. Const. These cases

further noted that it was not necessary for a specific sum to be designated for a particular purpose in the regular appropriations act and that an appropriation could validly be made "by setting apart and specifically appropriating the money derived from a particular source of revenue to a particular use." Lainhart v. Catts, 75 So. 47, 54 (Fla. 1917) (continuing appropriation to Everglades Drainage District Authority, paid from annual assessments imposed on lands inside the District) (citation omitted) (emphasis added); see also Carlton v. Mathews, 137 So. 815, 836 (Fla. 1931) (continuing appropriation for road repair, paid for by specific sources of revenue); Op. Att'y. Gen. Fla. 72-309 (1972).

In holding that the funds derived from a special assessment ("money raised by the special assessment is not paid into the general treasury of the state, but is a special fund, . . .") for drainage purposes made by the act creating the Everglades Drainage District was properly "appropriated" to the district, this Court reaffirmed the rule that "[a]n appropriation may be made by setting apart and specifically appropriating the money derived from a particular source of revenue to a particular use." The Lainhart decision is in accord with Southern Land, 33 So. at 1003, which held that a statutory provision that the revenue derived from a special tax "shall constitute a special fund to be used for public health purposes of the state" sufficiently appropriated such funds to such purposes, and with State ex rel. Bonsteel v. Allen, 91 So. 104, 106 (Fla. 1922), in which the Court held that the provisions

of the motor vehicle license tax statute relating to the use of a portion of the tax funds to pay for number plates, postage, and clerical work in administering the statute sufficiently complied with Article IX, Section 4, of the 1885 State Constitution. In each case, it was concluded that the Legislature appropriated money from a particular source of revenue for a particular purpose,[16] not from general revenue. Of course, the substantive law features of Section 215.32 and the statutory definitions, in part, "appropriation," had not yet been enacted into law. It was not until 1945 when the Legislature enacted the so-called Five Fund Act, Chapter 22833, Laws of Florida, creating, in part, the General Revenue Fund, and not until 1961 that the Legislature defined "appropriation."[17]

The continuing appropriations approved by this Court are limited in the same manner as trust funds. The Legislature may finance them in any amounts it desires, but it must do so by providing particular financing sources. When the Legislature funds a continuing appropriation, it ensures that, at the time the fiscal

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[16]The rationale behind the particular source of revenue requirement in continuing appropriations is simple. If a project or fund is financed by an appropriation that exists from year to year without the consideration of each Legislature, it has to have its own financing to avoid burdening the rest of the budget. In these continuing appropriations cases, the projects rose and fell on the income generated by their particular source of revenue, which was independent of general revenue. If their source of revenue ran short, the project either did without financing or the Legislature would have had to affirmatively appropriate more money from the current budget to that project. In either event, no money would be taken from general revenue without the consideration of the current Legislature.

[17]See footnotes 3 & 6, supra.

budget is considered each year, there are no outstanding obligations that are not considered. Each continuing appropriation stands or falls on the strength of its own financing source. Each continuing appropriation has no possible adverse effect on the current physical year budget or appropriations.

The treatment of the Act as a valid continuing appropriation leads directly into the pitfalls described in Sections I.A. and C. of this Brief. In election years, millions of dollars may have to be funneled from general revenue into the Trust Fund. However, the money in the General Revenue Fund will have already been pledged to other priorities by the Legislature, based on current legislative budgets. Or, in the alternative, the money would have to be transferred from the Working Capital Fund to finance the Trust Fund. Neither scenario is authorized by law; therefore, there can be no continuing appropriation under these circumstances.

C. THE ACT DOES NOT LAWFULLY FINANCE THE TRUST FUND

As discussed above, all money received by the State is deposited into the State Treasury and deposited either in the General Revenue Fund, a trust fund, or the Working Capital Fund. § 215.32(1)(a)-(c), Fla. Stat. (1993). The public financing of campaigns is purportedly financed by the Trust Fund created in 1986. Ch. 86-276, § 1, at 2030-31, Laws of Fla. The method of financing trust funds is prescribed by state law. "[T]rust funds shall consist of moneys received by the state which under law or under trust agreement are segregated for a purpose authorized by

law." § 215.32(2)(b)1., Fla. Stat. (1993) (emphasis added).[18]

It is important that "[a]ll such moneys are hereby appropriated . . .", refers to subsection 215.32(2)(b)1. which provides "[t]he trust funds shall consist of moneys received by the state which under law or trust agreement are segregated for a

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[18]In 1965, the Legislature received a report from the comptroller that for the fiscal year ending June 30, 1963, there were 402 trust funds in the State Treasury. Ch. 65-266, Whereas Clauses, at 965, Laws of Fla. The Legislature, in part, amended "section 215.32(2)(b), Florida Statutes, by redefining trust funds . . . ." Ch. 65-266, Title, at 965, Laws of Fla. In particular, subsection 215.32(2)(b)1. was amended in part to read: "(2) The source and use of each of the aforesaid funds shall be as follows: (b)1. The trust funds shall consist of moneys received by the state which under law or under trust agreement are segregated for a purpose authorized by law. . . ." Ch. 65-266, § 1, at 966, Laws of Fla. (emphasis added). In addition, the Legislature also amended Section 215.32(2)(b)3. to read:

> 3. All such moneys are hereby appropriated for the purpose which they were received, to be expended in accordance with the law or trust agreement under which they were received, subject always to other applicable laws relating to the deposit or expenditure of moneys in the state treasury.

Ch. 65-266, § 1, at 966-67, Laws of Fla. In 1980, the Legislature amended subsection (2)(b)3. to read:

> 3. All such moneys are hereby appropriated ~~for the purpose for which they were received,~~ to be expended in accordance with the law or trust agreement under which they were received, subject always to the provisions of chapter 216 relating to the appropriation of funds, and ~~other~~ applicable laws relating to the deposit or expenditure of moneys in the State Treasury.

Ch. 80-114, § 2, at 415, Laws of Fla. (emphasis and strike through in original).

purpose authorized by law." (emphasis added). The only moneys which can be lawfully appropriated are those which "are segregated for a purpose authorized by law." Stated differently, the "source" of moneys for "use" in trust funds is from a segregated, particular source of revenue or money. This interpretation is consistent with the general principles of law stated in Southern Land & Timber Company and its progeny. However, the General Revenue Fund is not a segregated or particular source of revenue or money. By definition, all moneys received by the State, except as provided for trust funds and the Working Capital Fund, are deposited in and accounted for in the General Revenue Fund.This language requires that trust funds be financed by specified sources of revenue, not general revenue.

"The General Revenue Fund shall consist of all moneys received by the state from every source whatsoever" with two exceptions. § 215.32(2)(a), Fla. Stat. (1993). The first exception is that money from sources specifically raised to finance a trust fund go directly to that trust fund, not through the General Revenue Fund. § 215.32(2)(b), Fla. Stat. (1993).[19] The second exception is that a certain portion of any unspent money in the General Revenue Fund, as well as money received that exceed the Revenue Estimating Conferences estimated funds available, are placed in the Working Capital Fund. § 215.32(2)(c), Fla. Stat. (1993).

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[19]This "exception," in and of itself, illustrates that money for trust funds is separate and apart from that in the General Revenue Fund.

The General Revenue Fund, therefore, consists of an undivided mass of funds received from almost all sources of revenue for the State of Florida. It does not "consist of moneys received by the state which under law or under trust agreement are segregated for a purpose authorized by law." § 215.32(2)(b)1., Fla. Stat. (1993). That being so, money from the General Revenue Fund cannot lawfully be used to finance a trust fund in general, and the Election Campaign Financing Trust Fund in particular. Accordingly, to the extent that the amendatory language to Section 106.32(1), Florida Statutes, purports to appropriate money (rather than transfer money) from general revenue, such an appropriation is illegal, and the Comptroller can not lawfully release the necessary money to finance campaigns.

This reading of Chapter 215 is further supported by the statutory requirement that, within fourteen days after approving the establishment of a trust fund, the Administration Commission was required to provide the legislative appropriations committee with the specific sources of all receipts to be deposited in the trust fund. § 215.32(2)(b)2.d., Fla. Stat. (1991).[20] Such a

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[20]This section was amended in 1992 to require the Executive Office of the Governor or the Chief Justice of the Supreme Court to provide this information at least 14 days prior to the establishment of a trust fund. Ch. 92-142, § 14, at 1207-08, Laws of Fla. This language was then stricken in 1993. Ch. 93-159, § 1, at 657-58, Fla. Sess. Law Serv. (West). However, the language was not stricken because the segregation requirement is no longer important; it was stricken because in 1993 the Legislature made other changes to trust fund law. The new language still requires specific sources of revenue to fund trust funds, sources of revenue that must be specifically authorized by the Legislature. See § 215.3206(1), Fla. Stat. (1993) ("A recommendation to recreate the trust fund may include suggested modifications to the purpose,

requirement presupposes that specific sources of all receipts to be deposited exist and are available for such reporting. It necessarily excludes moneys transferred from the General Revenue Fund because as an undivided whole, no specific sources of revenue would be available. The only consistent interpretation of Section 215.32(2)(b), Florida Statutes (1993), is that the only money that can be used to finance a trust fund are those that are raised through specific sources of revenue created, at least in part, for the purpose of financing such trust funds. Applying that rule to the amendatory language of Section 106.32(1), Florida Statutes (1993), the financing provided by Sections 99.092, 99.093, and 105.031, Florida Statutes (1993) is valid; the instruction that additional funds shall be transferred to the Election Campaign Financing Trust Fund from general revenue is not.[21]

CONCLUSION

In summary, the Legislature could have appropriated money in 1991, and in ensuing years, from a specific source of revenue based

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sources of receipts, and allowable expenditures. . . . Recommendations . . . shall be made as a part of the legislative budget request to the Legislature pursuant to s. 216.023.") (emphasis added.) Also, the requirements stricken from Section 215.32 still substantially exist at Section 215.3207, Florida Statutes ("All trust funds . . . shall be created by statutory language that specifies at least the following: . . . (4) [t]he sources of moneys which shall be credited to the trust fund or specific sources of receipts to be deposited into the trust fund.") § 215.3207(4), Fla. Stat. (1993). Accordingly, the law both in 1991 and 1993-94 only allows specific money to be used to finance a trust fund.

[21]Importantly, some proposals were made in 1991 to provide specific revenue sources to finance the Trust fund. See pp. 23-27, supra.

upon either a legislative budget or a finding of necessity. The money could have been placed in the Trust Fund as it had been in 1986 and used by qualifying candidates in the general election year, 1994. But, the Legislature did not do this. The Legislature did not properly appropriate any money in 1991 and, thus, the trial court erred in concluding that Section 106.32(1), Florida Statutes (1993) is a valid appropriation.

Respectfully submitted this 21st day of March, 1994.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Hand Delivery to Gerald B. Curington, Assistant Attorney General, Office of the Attorney General, The Capitol, PL-01, Tallahassee, Florida 32399-1050, and by U.S. Mail to Carol A. Licko, Thomson, Muraro, Razook & Hart, P.A., Suite 1700, One Southeast Third Avenue, Miami, Florida 33131, this 21st day of March, 1994.

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