

A statute addressed in this opinion has changed.

Please consult current Florida law.

June 28, 2005

Mr. Richard Brickman, Chairman
Florida PBA Law and Order PAC
c/o Mr. David Murrell
Florida PBA Executive Director
Post Office Box 11239
Tallahassee, FL 32302

RE: DE 05-04
Electioneering Communications;
§106.011(18), Florida Statutes

Dear Mr. Brickman:

This is in response to your request for an advisory opinion. As Chairman of a registered political committee, Florida PBA Law and Order PAC, the division has the authority to issue an opinion to you pursuant to section 106.23(2), Florida Statutes.

You advise in your request that the Florida PBA Law and Order PAC plans to make expenditures to disseminate messages, ie. paid expressions, through various television advertisements, radio advertisements, direct mail, newspaper or other mass print media which reference a clearly identified candidate for office without expressly advocating the election or defeat of that candidate. You also advise that you plan to coordinate or consult with candidates regarding the content of the messages, the timing of the release of these messages and the markets in which these messages will be released.

You ask essentially the following questions:

1. Under Chapter 106, Florida Statutes, would expenditures by the political committee for a paid expression in a communications media which references a clearly identified candidate for office without expressly advocating the election or defeat of that candidate constitute a contribution to or on behalf of any candidate?
2. Under Chapter 106, Florida Statutes, may the expenditure described in Question 1 be coordinated with or made upon consultation with a candidate without such

expenditure constituting a contribution to or on behalf of that candidate by the political committee?

3. Under Chapter 106, Florida Statutes, if a candidate who is referenced in or who benefits from the paid expression in a communications media by the political committee solicits funds, directly or indirectly, for the political committee would such solicitation activity cause the expenditures by the political committee for those messages to become a contribution to or on behalf of that candidate by the political committee?

The short answers to Questions 1 and 3 are no. The short answer to Question 2 is yes.

Section 106.011(18), Florida Statutes, reads as follows:

(18)(a) "Electioneering communication" means a paid expression in any communications media prescribed in subsection (13) by means other than the spoken word in direct conversation that:

1. Refers to or depicts a clearly identified candidate for office or contains a clear reference indicating that an issue is to be voted on at an election, without expressly advocating the election or defeat of a candidate or the passage or defeat of an issue.

2. For communications referring to or depicting a clearly identified candidate for office, is targeted to the relevant electorate. A communication is considered targeted if 1,000 or more persons in the geographic area the candidate would represent if elected will receive the communication.

3. For communications referring to or depicting a clearly identified candidate for office, is published after the end of the candidate qualifying period for the office sought by the candidate.

4. For communications containing a clear reference indicating that an issue is to be voted on at an election, is published after the issue is designated a ballot position or 120 days before the date of the election on the issue, whichever occurs first.

(b) The term "electioneering communication" does not include:

1. A statement or depiction by an organization, in existence prior to the time during which a candidate named or depicted qualifies or an issue identified is placed on the ballot for that election, made in that organization's newsletter, which newsletter is distributed only to members of that organization.

2. An editorial endorsement, news story, commentary, or editorial by any newspaper, radio, television station, or other recognized news medium.

3. A communication that constitutes a public debate or forum that includes at least two opposing candidates for an office or one advocate and one opponent of an issue, or that

solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum, provided that:

a. The staging organization is either:

(I) A charitable organization that does not make other electioneering communications and does not otherwise support or oppose any political candidate or political party; or

(II) A newspaper, radio station, television station, or other recognized news medium; and

b. The staging organization does not structure the debate to promote or advance one candidate or issue position over another.

(c) For purposes of this chapter, an expenditure made for, or in furtherance of, an electioneering communication shall not be considered a contribution to or on behalf of any candidate.

(d) For purposes of this chapter, an electioneering communication shall not constitute an independent expenditure nor be subject to the limitations applicable to independent expenditures. [Emphasis added.]

As you describe them, the type of paid expressions that you plan to make would constitute electioneering communications pursuant to section 106.011(18)(a), Florida Statutes. However, the Florida Legislature has specifically stated in section 106.011(18)(c), Florida Statutes, that expenditures made for electioneering communications are not considered contributions to or on behalf of any candidate for purposes of Chapter 106, Florida Statutes. Therefore, your planned electioneering communications expenditures do not constitute a contribution to or on behalf of the candidate who is referenced or depicted in the electioneering communication or to any candidate who may benefit from the electioneering communication.

With regard to Question 2, there are no provisions within Chapter 106, Florida Statutes, which regulate activities of coordination or consultation between an entity or person that is engaging in an electioneering communication and a candidate who is depicted or referred to in the electioneering communication or any candidate who may benefit from the electioneering communication. Therefore, an act of coordination or consultation between your political committee and a candidate depicted or referred to in or who may benefit from your electioneering communication would not cause the expenditure for the electioneering communication to become a contribution to the candidate.

Finally, as to Question 3, there are no provisions of Chapter 106, Florida Statutes, which would cause contributions made to a political committee that are then used by the political committee to pay for electioneering communications to become contributions to a candidate who is referenced in or who benefits from the electioneering communication. The fact that the candidate who is referenced in or who benefits from such electioneering communications solicits contributions to the political committee does not cause expenditures by the political committee for electioneering communications to become a contribution to or on behalf of that candidate by the political committee.

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SUMMARY

Electioneering communications expenditures do not constitute a contribution to or on behalf of the candidate who is referenced or depicted in or who benefits from the electioneering communication. An act of coordination or consultation between a political committee and the candidate depicted or referred to in or who benefits from the political committee's electioneering communication would not cause the expenditure for the electioneering communication to become a contribution to the candidate. Finally, the fact that the candidate who is referenced in or who benefits from such electioneering communications solicits contributions to the political committee does not cause expenditures by the political committee for the electioneering communications to become a contribution to or on behalf of that candidate by the political committee.

Sincerely,

Dawn K. Roberts
Director, Division of Elections

Prepared by:
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