

A statute addressed in this opinion has changed.

Please consult current Florida law.

September 15, 2005

Mr. Ralph Hughes
c/o Mr. Johnnie Byrd, Jr., Esquire
Byrd & Stitzel, P.A.
206 North Collins Street
Plant City, FL 33563

RE: DE 05-05
Electioneering Communications, § 106.011(18),
Florida Statutes; and
Political Committees, § 106.011(1)(a), Florida
Statutes

Dear Mr. Hughes:

This is in response to your request for an advisory opinion.

You advise that you are the controlling shareholder and chairman of the board of Caste-Crete Corporation, a Tampa, Florida business principally engaged in the manufacture of concrete building products. You also advise that from time to time you write “open letters” on corporate stationary signed in your capacity as a corporate officer or as chairman of the board for the purpose of stimulating public discussion and opinion on a wide range of public policy issues such as local government taxation, impact fees, financial responsibility and efficiency of local government and economic development of the Tampa Bay area. These letters are produced in-house and are mailed using the corporate USPS bulk rate permit to various business leaders, elected officials, political officials and individuals. Such mailings are often in excess of 1,000 pieces within a geographic area represented by various state and local candidates who are clearly identified in many of the “open letters.” Such letters also often discuss statewide and local referendum issues, but contain no words of express advocacy to vote for or against a candidate or ballot issue. You also state that you do not coordinate or consult with any candidate or entity with regard to these letters, nor do you accept any monies from any person or entity to subsidize the costs of these mailings.

You have asked several questions with regard to the requirements of Chapter 106, Florida Statutes, and its potential applicability to this activity. As a person engaged in political activity, the division has the authority to issue an opinion to you pursuant to section 106.23(2), Florida Statutes.

Although you have posed several interrelated inquiries, you in essence ask the following two questions:

1. Do these mailings constitute "electioneering communications" under section 106.011(18), Florida Statutes?
2. Do these activities cause the corporation to be a "political committee" for purposes of section 106.011(1)(a), Florida Statutes?

The short answer to Questions 1 and 2 is no.

Section 106.011(18), Florida Statutes, states:

(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.

The mailings that you describe do not meet the definition of a “communications media” as defined in section 106.011(13), Florida Statutes. A “communications media” is defined by statute as follows:

"Communications media" means broadcasting stations, newspapers, magazines, outdoor advertising facilities, printers, direct mailing companies, advertising agencies, the Internet, and telephone companies; but with respect to telephones, an expenditure shall be deemed to be an expenditure for the use of communications media only if made for the costs of telephones, paid telephonists, or automatic telephone equipment to be used by a candidate or a political committee to communicate with potential voters but excluding any costs of telephones incurred by a volunteer for use of telephones by such volunteer; however, with respect to the Internet, an expenditure shall be deemed an expenditure for use of communications media only if made for the cost of creating or disseminating a message on a computer information system accessible by more than one person but excluding internal communications of a campaign or of any group.

Therefore, as to Question 1, these “open letters,” as you describe them, do not constitute electioneering communications for purposes of Chapter 106, Florida Statutes.

As to Question 2, a “political committee” is defined in section 106.011(1), Florida Statutes, as follows:

(1)(a) "Political committee" means:

1. A combination of two or more individuals, or a person other than an individual, that, in an aggregate amount in excess of \$500 during a single calendar year:

a. Accepts contributions for the purpose of making contributions to any candidate, political committee, committee of continuous existence, or political party;

b. Accepts contributions for the purpose of expressly advocating the election or defeat of a candidate or the passage or defeat of an issue;

c. Makes expenditures that expressly advocate the election or defeat of a candidate or the passage or defeat of an issue; or

d. Makes contributions to a common fund, other than a joint checking account between spouses, from which contributions are made to any candidate, political committee, committee of continuous existence, or political party;

2. The sponsor of a proposed constitutional amendment by initiative who intends to seek the signatures of registered electors.

(b) Notwithstanding paragraph (a), the following entities are not considered political committees for purposes of this chapter:

1. Organizations which are certified by the Department of State as committees of continuous existence pursuant to s. 106.04, national political parties, and the state and county executive committees of political parties regulated by chapter 103.

2. Corporations regulated by chapter 607 or chapter 617 or other business entities formed for purposes other than to support or oppose issues or candidates, if their political activities are limited to contributions to candidates, political parties, or political committees or expenditures in support of or opposition to an issue from corporate or business funds and if no contributions are received by such corporations or business entities.

3. Organizations whose activities are limited to making expenditures for electioneering communications or accepting contributions for the purpose of making electioneering communications; however, such organizations shall be required to register and report contributions, including those received from committees of continuous existence, and expenditures in the same manner, at the same time, subject to the same penalties, and with the same filing officer as a political committee supporting or opposing a candidate or issue contained in the electioneering communication. If any such organization would

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be required to register and report with more than one filing officer, the organization shall register and report solely with the Division of Elections.

Because your letters do not expressly advocate the election or defeat of a candidate or the passage or defeat of an issue, the activities as you describe them do not meet the definition of a political committee for purposes of Chapter 106, Florida Statutes.

Additionally, because the letters do not expressly advocate the election or defeat of a candidate or the passage or defeat of an issue, they also do not constitute independent expenditures by you or the corporation under Chapter 106, Florida Statutes. See section 106.011(5), Florida Statutes.

SUMMARY

The "open letters," as you describe them, do not constitute electioneering communications for purposes of Chapter 106, Florida Statutes. Further, because your letters do not expressly advocate the election or defeat of a candidate or the passage or defeat of an issue, the activities as you describe them do not meet the definition of a political committee or an independent expenditure for purposes of Chapter 106, Florida Statutes.

Sincerely,

Dawn K. Roberts
Director, Division of Elections

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