

A statute addressed in this opinion has changed.

Please consult current Florida law.

June 8, 2007

Mr. Richard Giorgio
Patriot Games, Inc.
120 S. Dixie Highway, Suite 202
West Palm Beach, Florida 33401

RE: DE 07-01
Electioneering Communications Organizations
§§ 106.011(1), 106.07(1), (3), and (7), Florida Statutes

Dear Mr. Giorgio:

This letter responds to your request for an advisory opinion. Because you are a partner in a political consulting firm, an organization that engages in political activity, the Division has the authority to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2006).

You ask essentially the following questions:

1. What filing schedule does an electioneering communications organization (ECO) use?
2. Beyond quarterly reports, does the ECO file accelerated reports following the last day of qualifying and prior to a September primary and the November general election?
3. If so, does the ECO file even if it is not “supporting or opposing a candidate”¹ in said elections?

¹ The words “supporting or opposing a candidate” lend themselves to confusion. To qualify as an ECO, its activities must be “limited to making expenditures for electioneering communications or accepting contributions for the purpose of making electioneering communications.” Section 106.011(19), Florida Statutes (2006). An “electioneering communication” includes a paid expression in a communications media, as defined in section 106.011(13), Florida Statutes (2006), that refers to or depicts a clearly identifiable candidate or issue that is to be voted upon; however, an ECO may not “expressly advocate” the election or defeat of a candidate or the passage or defeat of an issue. Section 106.011(18)(a)1., Florida Statutes (2006). As indicated in DE 05-06, “expressly advocates” include express words of advocacy for the election or defeat of a candidate or issue such as “vote for,” “elect,” “support,” “cast your vote for,” “Smith for Congress,” “vote against,” “defeat,” “oppose,” and “reject.” **Therefore, when this opinion uses the words “supporting or opposing a candidate,” or any tense thereof, its application is limited to those situations where an ECO engages in lawful activity and does not “expressly advocate” the election or defeat of a candidate or the passage or defeat of an issue.**

4. Does the ECO need to file accelerated reports following the last day of qualifying and prior to a municipal election when it is “supporting or opposing a municipal candidate”?
5. If so, does the ECO file even if it is not “supporting or opposing a candidate” in said election?
6. Do copies of the report filed with the Division of Elections need to be furnished to County Supervisors’ of Elections, municipal clerks, etc.?

The short answer to Question 1 is that the ECO uses the filing schedule for a political committee as contained in section 106.07(1), Florida Statutes (2006). The short answers to Questions 2, 3, and 4 are “yes,” and the short answers to Questions 5 and 6 are “no.”

With regard to Question 1, section 106.011(1)(b)3., Florida Statutes (2006), requires an ECO “to register with and report expenditures and contributions, including contributions received from committees of continuous existence, to the Division of Elections in the same manner, at the same time, and subject to the same penalties as a political committee supporting or opposing an issue or a legislative candidate, except as otherwise specifically provided in this chapter.” Therefore, for purposes of registering and reporting expenditures and contributions, an ECO must follow the requirements for a political committee. Such reporting is to be done with the Division of Elections through the Electronic Filing System (EFS), *see* section 106.0705, Florida Statutes (2006).

Section 106.07, Florida Statutes, contains the reporting requirements for contributions and expenditures for a political committee; therefore, it also contains the reporting requirements for an ECO. As contained in section 106.07(1), Florida Statutes (2006), reports must be filed on the 10th day following the end of each calendar quarter from the time the campaign treasurer is appointed.

With regard to Question 2, section 106.07(1)(a), Florida Statutes (2006), further indicates that following the last day of qualifying, reports are to be filed on the 32nd, 18th, and 4th days immediately preceding the primary election and on the 46th, 32nd, 18th, and 4th days immediately preceding a general election. Because these “accelerated” reports include those by political committees, they apply also to an ECO.

With regard to Question 3, section 106.07(7), Florida Statutes (2006), states:

Notwithstanding any other provisions of this chapter, in any reporting period during which a candidate, political committee, or committee of continuous existence has not received funds, made any contributions, or expended any reportable funds, the filing of the required report for that period is waived. However, the next report filed must specify that the report covers the entire period between the last submitted report and the report being filed, and any candidate, political committee, or committee of continuous existence not reporting by virtue

of this subsection on dates prescribed elsewhere in this chapter shall notify the filing officer in writing on the prescribed reporting date that no report is being filed on that date. [Emphasis added.]

Based upon this provision, when the ECO does not “support or oppose a candidate” in a primary or general election and would not otherwise be required to file a report, the ECO must notify the Division of Elections that it had no activity during the reporting period by filing a waiver of report via the EFS.

With regard to Question 4, as indicated above, the ECO must file its reports with the Division of Elections in the same manner as a political committee. Section 106.07(3), Florida Statutes (2006), reads in part:

Reports required of a political committee shall be filed with the agency or officer before whom such committee registers pursuant to s. 106.03(3) and shall be subject to the same filing conditions as established for candidates' reports.

Because a candidate would have to file the accelerated reports in municipal elections, the ECO would also have to file an “accelerated” report with the Division of Elections when the ECO “supports or opposes a candidate” in a municipal election.

However, with regard to Question 5, if the ECO does not “support or oppose a candidate” in a municipal election, it is akin to a political committee not becoming involved in the municipal election. Because the ECO’s reports are those required of a political committee, when the ECO does not become involved (that is, it makes no expenditures for electioneering communications or accepts no contributions for purpose of making electioneering communications) in a municipal election, the Division does not require any report to be filed regarding the ECO’s non-activity in the municipal election.

Finally, as regard to Question 6, filing within the EFS negates the need to file the report locally (*e.g.*, with the supervisor of election or municipal clerk).

SUMMARY

Electioneering communication organizations follow the filing schedule of political committees supporting or opposing an issue or a legislative candidate. Besides the quarterly reports, an ECO must file the accelerated reports set forth in section 106.07(1)(a), Florida Statutes (2006), prior to a primary election and prior to a general election, regardless of whether the ECO “supports or opposes a candidate” in the elections. An ECO must also file accelerated reports with the Division following the last day of qualifying and prior to a municipal election when it “supports or opposes” a municipal candidate; however, the ECO has no filing requirements regarding a municipal election when it does not engage in any electioneering communications activity in the municipal election. Lastly, by filing campaign finance reports with the Division of Elections via

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the Electronic Filing System, the ECO is not required to file its reports with local election officials.

Sincerely,

Amy K. Tuck

Director, Division of Elections

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