

RESCINDED

August 20, 2007

Mr. Jon Kislak
Florida Red and Blue, Inc.
9999 NE 2nd Avenue, Suite 306
Miami Shores, Florida 33138

RE: DE 07-03
Political Committees
§§ 106.011(7) and 106.17, Florida Statutes

Dear Mr. Kislak:

This letter responds to the request from Ms. Alicia H. Apfel, attorney for the Florida Red and Blue, Inc. Political Committee, for an advisory opinion regarding proposed actions by the organization. Pursuant to Rule 1S-2.010, Florida Administrative Code, we address this opinion to you as the chairperson for Florida Red and Blue, Inc. Political Committee. Your political committee proposes to engage the services of a professional polling firm in connection with its opposition to a proposed ballot initiative to amend Florida's Constitution. Because the political committee has questions about compliance with Florida's election laws with respect to its proposed actions, the Division has the authority to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2007).

Your political committee's attorney asked essentially the following questions:

1. Does section 106.17, Florida Statutes (2007), or any Florida statutory provision, preclude two or more Florida political committees from jointly conducting an *issue-oriented* poll, survey or measurement of voter sentiment (jointly referred to hereafter as "poll") as the term "issue" is defined in section 106.011(7), Florida Statutes (2007)?
2. If the answer to question #1 is answered "No," may two or more political committees jointly conduct such a poll in one of the following ways?
 - a. May the political committees jointly engage the services of a professional polling firm with each political committee paying a portion of the cost of the polling directly from its own campaign account, with each political committee reporting such expenditure in its own campaign finance report and each reporting the balance of the cost of the polling covered by the other political

committee as an in-kind contribution from the other participating political committee?

b. May the political committees jointly engage the services of a professional polling firm with one political committee paying the entire portion of the cost of the polling directly from its own campaign account and the other participating political committee making a contribution from its campaign account to the first political committee for a portion of the cost? If so, should both political committees report their respective expenditures from their campaign accounts along with the first political committee reporting the contribution from the second political committee?

c. If a political committee pays for the entire cost of the professionally conducted poll directly from its own campaign account and then shares the confidential results of the poll with another political committee, is the second political committee which receives the poll results required to report this as an in-kind contribution and, if so, should it be valued at the full cost of the poll to the political committee which commissioned the poll?

d. If one political committee contributes only the time of paid staff to the polling activity and receives the confidential results of the poll from the political committee responsible for paying for the cost of the poll, should the political committee which paid for the poll report on its campaign report the in-kind contribution of the other political committee's staff time and should the other political committee report on its campaign report the value of the in-kind contribution of the poll results?

The short answer to your first question is that, by Section 106.17, Florida Statutes (2007), omitting any reference to polls regarding an "issue," no authority exists in the Election Code for a political committee, either alone or jointly with other political committees, to conduct an *issue-oriented* poll, survey or measurement of voter sentiment. Therefore, answers to your remaining questions are not necessary.

With regard to Question 1, the Division of Elections is authorized to issue advisory opinions only regarding possible violations of Florida's election laws. The question goes beyond our jurisdiction in asking whether "any Florida statutory provision" precludes the proposed action; therefore, we limit our response only to an interpretation of the Florida Election Code (chapters 97-106, Florida Statutes (2007)).

Section 106.17, Florida Statutes (2007), states:

Any candidate, political committee, committee of continuous existence, electioneering communication organization,¹ or state or county executive

¹ This section will not apply to committees of continuous existence or electioneering communication organizations until January 1, 2008. 2007 Fla. Laws. Ch 2007-30 § 47.

committee of a political party may authorize or conduct a political poll, survey, index, or measurement of any kind relating to candidacy for public office so long as the candidate, political committee, committee of continuous existence, electioneering communication organization, or political party maintains complete jurisdiction over the poll in all its aspects. [*Emphasis supplied.*]

By its own terms, the statute provides authority to a political committee to authorize or conduct political polls solely “relating to candidacy for public office.” The Election Code contains no similar grant of authority to political committees to authorize or conduct political polling regarding an “issue.” Section 106.011(7), Florida Statutes (2007), defines “issue” as:

"Issue" means any proposition which is required by the State Constitution, by law or resolution of the Legislature, or by the charter, ordinance, or resolution of any political subdivision of this state to be submitted to the electors for their approval or rejection at an election, or any proposition for which a petition is circulated in order to have such proposition placed on the ballot at any election.

An “issue” does not relate to “candidacy for public office.” Because the Election Code is silent on a political committee’s political polling relating to an “issue,” as opposed to “candidacy,” the Legislature, in section 106.17, Florida Statutes (2007), apparently did not intend to permit a political committee the ability to authorize or conduct political polls, surveys, indexes, or measurements relating to “issues.” In a somewhat analogous situation, in *Division of Elections Opinion* 82-12 (June 17, 1982), the Division interpreted section 106.17, Florida Statutes, as requiring a person to become a candidate before he could commission any poll relating to his candidacy. A non-candidate asked if he could commission a poll to determine whether he should run for an office without declaring as a candidate. Due to the silence of the Election Code on the issue of a non-candidate commissioning a poll, the Division opined that no authority existed for the non-candidate to conduct a “testing of the waters” poll before becoming a candidate. In the present situation, no authority exists in the Election Code for “issue-oriented” political polls.

Because nothing in the Election Code gives authority to a political committee to conduct an issue-oriented poll, it follows that a political committee may not join forces with one or more political committees to employ the services of a professional polling firm in conducting a political poll relating to an “issue.”

Based upon the answer to your first question, answers to your remaining questions are not necessary.

SUMMARY

Section 106.17, Florida Statutes (2007), permits a political committee to “authorize or conduct a political poll, survey, index, or measurement of any kind relating to candidacy for office....”

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Because the Legislature did not provide authority for political committee to authorize or conduct polls on an "issue" as defined by the Election Code, no authority exists for a political committee to conduct an issue-only poll.

Sincerely,

Amy K. Tuck
Director, Division of Elections

Prepared by:
Gary J. Holland
Assistant General Counsel

cc: Alicia H. Apfel, Esq.