



FLORIDA DEPARTMENT *of* STATE

CHARLIE CRIST
Governor

DAWN K. ROBERTS
Interim Secretary of State

October 8, 2010

Steven Gold, ActBlue General Counsel
Erin Hill, ATS Executive Director
14 Arrow Street
Cambridge, Massachusetts 02138

RE: DE 10-11
Campaign Financing – Contributions through a
conduit
§§ 106.011(1), (3), and 106.08, Florida Statutes

Dear Mr. Gold and Ms. Hill:

This letter responds to your joint request for an advisory opinion regarding proposed actions that ActBlue and its subsidiary, ActBlue Technical Services (ATS), desire to take. Because ActBlue and ATS have questions about compliance with Florida's election laws with respect to their proposed actions, the Division of Elections has the authority to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2010).

You state that ActBlue, an IRS tax-exempt 527 organization, provides a website that allows persons to make contributions via credit card to Democratic candidates and political committees registered in Florida. The funds resulting from the contributions currently are transferred directly from the credit card processor to the intended recipient candidate's or committee's bank account without being deposited in ActBlue's bank account at any point. Your further state that ATS is a separate 527 organization whose mission is to provide the technical services necessary to keep ActBlue running, to include performing the technical aspects of processing the contributions made through ActBlue's website. Although ActBlue and ATS are separate legal entities, you state that they work together to achieve common goals and ATS serves no clients other than ActBlue.

ActBlue wishes to modify its current mode of operation by either (1) processing the contributions to candidates and political committees made via its website directly through ActBlue's bank account rather than through the credit card payment processor; or (2) having the credit card processor deposit the contributions received into the bank account of ATS, which would then distribute the contributions to the intended recipient candidates and committees.

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Under both scenarios, you desire to know if ActBlue and ATS would have to register as a political committee in Florida. The answer is “yes” if ActBlue or ATS anticipates collecting contributions for use by Florida candidates and political committees during a calendar year in an aggregate amount exceeding \$500. The response and analysis that we provided to ActBlue in *Division of Elections Opinion 08-03* (March 24, 2008) remain applicable to the present proposed actions.

Section 106.011(1)(a), Florida Statutes (2010), specifies that a “political committee” includes:

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; [*Emphasis supplied.*]

For the purposes of this opinion, we assume that ActBlue and ATS would receive more than \$500 in a calendar year with regards to the contributions made via ActBlue’s website. Although you state that ActBlue itself is not trying to influence an election, the contributions themselves that it collects from the website donors, which ActBlue or ATS would subsequently distribute to candidates and committees are intended to influence an election. “Contribution” includes “a distribution of money or anything of value ... made for the purpose of influencing an election.” §106.011(3)(a), Fla. Stat. (2010). While you state “ActBlue does not endorse or promote any individual candidates or causes,” you state that ActBlue’s website provides “a directory of Democratic candidates for office and committees promoting Democratic causes.” Our review of ActBlue’s website reveals a subtitle for ActBlue’s site of it being “The online clearinghouse for Democratic action.” The website also prominently provides on its “Contribute” page: “The Best Way to Support the Democrats of Your Choice.” ActBlue’s website specifically indicates that it is “an FEC-registered political committee ...” and “We’re a PAC, not a business. Our goal is to help you get as much money to Democrats as we can.”

We conclude that when ActBlue or its subsidiary subsequently distributes funds to the intended recipients from the contributions that it received via ActBlue’s website, it is intending to influence the results of elections on behalf of Democratic Party candidates and causes. If you incorporate either of the contemplated operational changes regarding Florida candidates and political committees, based upon the application of the relevant statutory definitions to your proposed scenarios, ActBlue and ATS would be “accept[ing] contributions for the purpose of making contributions” to candidates and political committees; therefore, they would have to register as a political committee under section 106.03, Florida Statutes (2010).

Furthermore, as stated in *Division of Elections Opinion 08-03* (March 24, 2008), because the contributions via the website are earmarked for specific candidates and political committees by the donors, Florida law prohibits a person contributing in the name of another. Section 106.08(5)(a), Florida Statutes (2010), states:

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A person¹ may not make any contribution through or in the name of another, directly or indirectly, in any election.²

Because ActBlue or ATS intends to deposit the donors' contributions in ActBlue's or ATS's bank account and then distribute the contributions to the intended candidates and political committees, ActBlue or ATS would be serving illegally as a conduit in making a contribution in the name of another. As also stated in *Division of Elections Opinion 08-03* (March 24, 2008), once deposited in ActBlue's or ATS's bank account, under Florida law, the funds would lose their identity as a contribution to the candidates or other political committees on behalf of the individual donor and the funds become contributions to ActBlue or ATS. Any subsequent distribution of those funds would be a contribution from ActBlue or ATS to a candidate or political committee, not from the original donor.

SUMMARY

If an organization accepts credit card donations on the organization's website for candidates or political committees in Florida, which donations are deposited into the organization's bank account (rather than having the funds directly processed by the credit card company to the intended recipients) and subsequently provides the contributions to the intended candidates or political committees, it must register as a political committee in Florida if such contributions received by the organization exceeds \$500 during a single calendar year. The organization (political committee) may not make the contribution to candidates and other political committees in the name of the donor who made the credit card donation to the organization.

Sincerely,



Donald L. Palmer

Director, Division of Elections

¹ "Person" means an individual or a corporation, association, firm, partnership, joint venture, joint stock company, club, organization, estate, trust, business trust, syndicate, or other combination of individuals having collective capacity. The term includes a political party, political committee, or committee of continuous existence. § 106.011(8), Fla. Stat.

²A violation of this provision may result in civil penalties imposed by the Florida Elections Commission and a misdemeanor or felony conviction. §§ 106.08(7), (8), and 106.265, Fla. Stat. (2010).