



FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

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Secretary of State

July 16, 2012

Ms. Jennifer S. Blohm
Meyer, Brooks, Demma, and Blohm, P.A.
P. O. Box 1547
Tallahassee, Florida 32302

RE: DE 12-08 -- Corporations; Independent
Expenditures; Political Committees –
§ 106.011 and 106.071, Florida Statutes

Dear Ms. Blohm:

This letter responds to your request for an advisory opinion. Because your law firm engages in political activity and you have a question about compliance with Florida's election laws with respect to actions your firm proposes to take, the Division has the authority to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2011). By way of background, you state:

The firm is considering using business funds to disseminate independent expenditures in excess of \$500 in support of or opposition to a candidate in the upcoming 2012 primary and general elections. The firm will not accept contributions for the expenditures. The expenditures will not be coordinated with any candidate or any other corporation or entity. The firm is aware that if it expends in excess of \$5,000 on the independent expenditures, it will have to report the expenditures to the appropriate filing officer in accordance with section 106.071, Florida Statutes. However, it is unclear if the firm will have to register as a political committee if the costs of the independent expenditure[s] exceed \$500.

Based upon the firm's intended actions (and actions of clients which the firm represents), you desire an advisory opinion on the following question:

May a business entity or a corporation formed under Chapter 607 or Chapter 617, Florida Statutes, for purposes other than to influence an election use business/corporate treasury funds to disseminate independent expenditures in excess of \$500 that support or oppose a candidate without having to register and



report as a political committee?

As applied to the factual situation in your request for an opinion, the short answer to your question is that Florida law requires the business entity or corporation to register and report as a political committee.

Florida law defines a “political committee” as:

A combination of two or more individuals, *or a person¹ other than an individual*, that, in an aggregate amount in excess of \$500 during a single calendar year . . . [m]akes expenditures that expressly advocate the election or defeat of a candidate or the passage or defeat of an issue.²

The law excepts from the definition of “political committee” a corporation or business entity that satisfies the following:

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, affiliated party committees, 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

Florida law also defines an “independent expenditure” as an expenditure that expressly advocates the election or defeat of a candidate or the approval or rejection of an issue and which is not controlled by, coordinated with, or made upon consultation with, any candidate, political committee, or agent of such candidate or committee.⁴ Furthermore, section 106.071(1), Florida Statutes (2011), provides:

Each person who makes an independent expenditure with respect to any candidate or issue . . . which expenditure, in the aggregate, is in the amount of \$5,000 or more, shall file periodic reports of such expenditures in the same manner, at the same time, subject to the same penalties, and with the same officer as a political committee supporting or opposing such candidate or issue.

¹ A “person” for purposes of Chapter 106, Florida Statutes, includes, among others, an individual, corporation, association, firm, partnership, organization, or a combination of individuals having collective capacity. § 106.011(8), Fla. Stat. (2011). Therefore, “a person other than an individual” within the definition of “political committee” includes all those listed within § 106.011(8), Fla. Stat. (2011), except an individual human.

² § 106.011(1)(a)1.c., Fla. Stat. (2011). (Emphasis added.)

³ § 106.011(1)(b)2., Fla. Stat. (2011). (Emphasis added.)

⁴ § 106.011(5)(a), Fla. Stat. (2011).

When considered together, these statutes regulating political committee and independent expenditures reveal that a corporation regulated by chapter 607 or chapter 617 or a business entity formed for purposes other than to support or oppose issues or candidates and whose political activities are limited to making “contributions to candidates, ... or expenditures in support of or opposition to” issues may make unlimited independent expenditures. If, however, the expenditures in the aggregate equate to \$5000 or more, the corporation or business entity (as “a person other than an individual”) must file periodic reports at the same time, place, manner, and subject to the same penalties as a political committee supporting or opposing the same issues.

Your inquiry, however, focuses on corporations or business entities which desire to make independent expenditures solely supporting or opposing candidates, not issues. Section 106.011(1)(b)2., Florida Statutes (2011), is clear from the definition of “political committee” that the exception for corporation or business entities only applies to expenditures relating to issues, not candidates. Therefore, application of the statutes would require corporations or business entities which make independent expenditures more than \$500 in a calendar year supporting or opposing candidates to register as a political committee.⁵

Your letter suggests that some tension may exist between the requirements of Florida statutory law regarding independent expenditures and the recent federal court decisions in *Citizens United v. Federal Election Commission*, 558 U.S. 50 (2010), and *Speechnow.org v. Federal Election Commission*, 599 F.3d 686 (D.C. Cir. 2010). In *Citizens United*, the United States Supreme Court held that a federal campaign finance provision prohibiting all independent expenditures by corporations and labor unions violated the First Amendment to the United States Constitution. In *Speechnow.org*, the United States Court of Appeals for the District of Columbia Circuit concluded that a federal campaign finance provision limiting individuals’ contributions to an “independent-expenditure-only” committee likewise violated the First Amendment.

To the extent the reasoning of these federal opinions might apply to provisions of the Florida Election Code, the Division of Elections lacks the authority to expand the scope of the statutory exemption from the definition of the term “political committee” contained in section 106.011(1)(b)2. of the Florida Statutes. These concerns would most appropriately be directed to the Florida Legislature.

⁵ This conclusion is supported by *Division of Elections Opinion* 94-01 (January 4, 1994), which interpreted a prior version of the definition of political committee that included an exception for corporations and business entities supporting or opposing candidates as well as issues. The Division opined that a corporation may make independent expenditures, but if two or more corporations pooled their funds in an amount that exceeded \$500 in a calendar year to make independent expenditures, the corporations must register as a political committee. The opinion, however, did not specifically address the present inquiry whether a single corporation would have to register as a political committee if it made independent expenditures over \$500 in a calendar year.

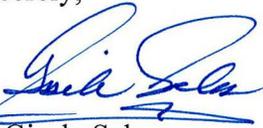
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Finally, the Division notes that both *Citizens United* and *Speechnow.org* specifically upheld the registration, reporting, and disclaimer requirements applicable to federal political committees against First Amendment challenges. Florida's registration and reporting requirements for political committees and electioneering communications organizations have also been challenged in the wake of *Citizens United* and have likewise been upheld by the federal courts. *See Worley v. Detzner*, No. 10-CV-423 (N.D. Fla. July 2, 2012); *National Organization for Marriage v. Secretary of State*, 2012 WL 1758607, No. 11-14193 (11th Cir. May 17, 2012).

SUMMARY

Florida statutory law requires a business entity or a corporation formed under Chapter 607 or Chapter 617, Florida Statutes, for purposes other than to support or oppose issues or candidates, which uses its business/corporate treasury funds to make independent expenditures in excess of \$500 that support or oppose a candidate to register and report as a political committee.

Sincerely,



Dr. Gisela Salas
Director, Division of Elections