



## FLORIDA DEPARTMENT OF STATE

**RICK SCOTT**  
Governor

**KEN DETZNER**  
Secretary of State

November 15, 2012

Mr. Matt Puckett  
Treasurer, PBA Voice of Law Enforcement Fund, Inc.  
300 E. Brevard Street  
Tallahassee, Florida 32301-1218

RE: DE 12-14  
Campaign Financing; Electioneering  
Communications Organizations – State-registered  
ECO filing reports with a municipality –  
§§ 106.03(1)(b) and 106.0703, Florida Statutes

Dear Mr. Puckett:

This letter responds to your request for an advisory opinion. As the treasurer of PBA Voice of Law Enforcement Fund, Inc., an electioneering communications organization (ECO), registered with the Division of Elections, you seek guidance regarding the ECO's compliance with chapter 106, Florida Statutes (2012), relating to its campaign finance reporting requirements when the ECO participates in a municipal election at the same time as an ongoing state and federal election. Because the PBA Voice of Law Enforcement Fund, Inc., has questions about compliance with Florida's election laws with respect to its reporting requirements, the Division of Elections has the authority to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2012).

Your ECO's statement of organization filed with the Division of Elections indicates that its area, scope, and jurisdiction are "state, county and local candidates." Your ECO normally files its campaign finance reports with the Division of Elections because the ECO participates in statewide, legislative, or multicounty elections.<sup>1</sup> You state that the City of Hollywood's

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<sup>1</sup> See § 106.03(1)(b)2.a., Fla. Stat. (2012) ("In a statewide, legislative, or multicounty election, an electioneering communications organization shall file a statement of organization with the Division of Elections.").

### Division of Elections

R.A. Gray Bldg., Rm. 316 • 500 S Bronough St. • Tallahassee, Florida 32399-0250  
Telephone: (850) 245-6200 • Facsimile: (850) 245-6217 [elections.myflorida.com](http://elections.myflorida.com)  
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municipal charter has a provision which essentially provides that an ECO shall file regular reports with the city clerk for the contributions and expenditures received and made in furtherance of its activities in municipal elections. The reporting dates for the municipality's reports track those required by section 106.10703(1)(a) and (b), Florida Statutes (2012). The municipality insists that your ECO must file such reports with the municipality even if it files its campaign finance reports with the Division of Elections, which reports would also reflect the ECO's contributions and expenditures involved in the municipal election. You believe the position of the municipality conflicts with the provisions of chapter 106, Florida Statutes.<sup>2</sup>

You ask essentially the following question: Must an ECO, which is registered with the Division of Elections and which would be required to file campaign finance reports with the Division for its ECO activities in a statewide, legislative, or multicounty election, also file a separate campaign finance report with a municipality for its ECO activities during a municipal election that coincides with a state or federal election?

The short answer to your question is "no." An ECO that would be required to file campaign finance reports in two or more locations need only file its campaign finance reports with the Division of Elections. Therefore, an ECO like yours, which files its reports with the Division of Elections for its involvement in a statewide, legislative, or multicounty election, need only file with the Division of Elections unless the ECO makes contributions or expenditures in a county or municipal election which is not being held at the same time as a federal or state election. If a city's charter or ordinance requires an ECO registered with the Division of Elections to file campaign finance reports at times other than those specified in chapter 106, Florida Statutes, the charter or ordinance impermissibly conflicts with the state statute.

The analysis of your issue begins by highlighting the definitions in chapter 106, Florida Statutes. An "election" includes a municipal election held in Florida for electing candidates to public office.<sup>3</sup> "Public office" includes any municipal office filled by the vote of the electors.<sup>4</sup> Likewise, the definitions of "contributions" and "expenditures" indicate that they are for the purpose of influencing the results of an "election."<sup>5</sup> Along with other criteria, an "electioneering communication" must be a communication which "[r]efers to or depicts a clearly identified candidate for office" constituting less than express advocacy, but which "is susceptible of no

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<sup>2</sup> The Division of Election has no authority to interpret a municipal charter provision; however, it may interpret Florida election laws. § 106.23(2), Fla. Stat. (2012). This opinion, therefore, limits its interpretation to the Election Code and applies customary rules of statutory construction.

<sup>3</sup> § 106.011(6), Fla. Stat. (2012).

<sup>4</sup> § 106.011(10), Fla. Stat. (2012).

<sup>5</sup> §§ 106.011(3) and (4), Fla. Stat. (2012).

reasonable interpretation other than an appeal to vote for or against a specific candidate.”<sup>6</sup> Finally, an ECO is “limited to making expenditures for electioneering communications or accepting contributions for the purpose of making electioneering communications.”<sup>7</sup> These definitions reflect, as did *Division of Elections Opinion 95-05* (October 2, 1995), that chapter 106, Florida Statutes, is expressly made applicable to municipalities. Section 100.3605(1), Florida Statutes (2012), provides:

The Florida Election Code, chapters 97-106, shall govern the conduct of a municipality’s election in the absence of an applicable special act, charter, or ordinance provision. No charter or ordinance provision shall be adopted which conflicts with or exempts a municipality from any provision in the Florida Election Code that expressly applies to municipalities.

Therefore, a municipality’s charter or ordinance provision may not conflict with any provision of chapter 106. Where a state statute specifically provides that it applies to cities, state law prevails over any conflicting city charter or ordinance.<sup>8</sup>

The provisions of the Election Code concerning ECO filings and reports must next be examined to determine if the city charter’s provision conflicts with the statutory provisions relating to ECO campaign finance reports. When an ECO registers, it registers with a “filing officer.”<sup>9</sup> Section 106.03(1)(b)2., Florida Statutes (2012), specifies that the entity or person before whom an ECO registers depends upon the type of election being held; therefore, the “filing officer” may be either the Division of Elections, a county supervisor of elections, or the officer before whom municipal candidates qualify (typically, the city clerk). However, any ECO “that would be required to file a statement of organization [*i.e.*, would be required to register] in two or more locations need only file a statement of organization with the Division of Elections.”<sup>10</sup> Furthermore, section 106.0703(1), Florida Statutes (2012), provides that each electioneering communications organization shall file reports of its contributions and expenditures. More specifically, section 106.0703(2)(a), Florida Statutes (2012), provides: “Except as provided in s.

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<sup>6</sup> § 106.011(18)(a)1., Fla. Stat. (2012).

<sup>7</sup> § 106.011(19), Fla. Stat. (2012).

<sup>8</sup> *See Thomas v. State*, 614 So. 2d 468 (Fla. 1993) (“Although municipalities and the state may legislate concurrently in areas not expressly preempted by the state, a municipality’s concurrent legislation must not conflict with state law.”)

<sup>9</sup> A “filing officer,” by definition, is the entity of person with whom an ECO registers. § 106.011(14), Fla. Stat. (2012).

<sup>10</sup> § 106.03(1)(b)2.d., Fla. Stat. (2012).

106.0705,<sup>11</sup> the reports required of an electioneering communication organization shall be filed with the filing officer not later than 5 p.m. of the day designated.” [*Emphasis supplied.*] Thus, these provisions mandate that an ECO file its campaign finance reports with the person or entity before which it filed its statement of organization. *i.e.*, its “filing officer.” If the ECO is registered with the Division of Elections and is participating in a statewide, legislative, or multicounty election, it must file its campaign finance reports with the Division of Elections, except in the one situation specified in section 106.0703(1)(d), Florida Statutes (2012), *i.e.*, when the ECO makes contributions or expenditures in a county or municipal election *not being held at the same time* as a federal or state election, it must file the report with the county or municipal filing officer on the reporting dates established for the county or municipal election. [*Emphasis supplied.*] Thereafter, the ECO in this situation must also include the expenditures in its next report filed with the Division of Elections after the county or municipal election.<sup>12</sup>

Based upon the above analyses, the conclusion is that any attempt by a municipality to have an ECO file a separate campaign finance report with its filing officer when the ECO’s filing officer is the Division of Elections would conflict with the express terms of chapter 106, Florida Statutes, except in the one situation described above. Section 106.0703, Florida Statutes (2012), not only applies to municipalities by the definitions of the terms used in the section, but the section itself expressly mentions municipalities in reference to its elections, candidates, and filing officer. Because the ECO reporting provisions in section 106.0703 expressly apply to municipalities, a municipality may not alter the reporting requirements via application of section 100.3605. Section 106.0703, Florida Statutes (2012), is clear that only one time exists when an ECO registered with the Division of Elections must file a report with a city. If a city’s charter or ordinance requires an ECO registered with the Division of Elections to file campaign finance reports at times other than those specified in chapter 106, Florida Statutes, the charter or ordinance impermissibly conflicts with the state statute.

#### SUMMARY

An electioneering communications organization (ECO) that would be required to file campaign finance reports in two or more locations need only file its campaign finance reports with the Division of Elections. Therefore, an ECO which files its reports with the Division of Elections for its involvement in a statewide, legislative, or multicounty election need only file with the Division of Elections unless the ECO makes contributions or expenditures in a county or municipal election which is not being held at the same time as a federal or state election. If a city’s charter or ordinance requires an ECO registered with the Division of Elections to file

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<sup>11</sup> Section 106.0705 concerns electronic filing and is not relevant to the issue being addressed by this opinion.

<sup>12</sup> § 106.0703(1)(d), Fla. Stat. (2012).

Mr. Matt Puckett  
November 15, 2012  
Page 5 of 5

campaign finance reports at times other than those specified in chapter 106, Florida Statutes, the charter or ordinance impermissibly conflicts with the state statute.

Sincerely,

A handwritten signature in black ink, appearing to read "John Boynton", with a long horizontal flourish extending to the right.

John Boynton  
Acting Director, Division of Elections  
Deputy Secretary of State for Administrative Services,  
Corporations and Elections