



FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

June 25, 2014

Mark Hanisee
Pinellas County Democratic Executive Committee
Gerald Goen
Tarpon Springs Democratic Club
Joel A. Greenwald
Democratic Club of Wynmoor
c/o Mark Herron
Messer Caparello
2618 Centennial Place
Tallahassee, FL 32308

RE: DE 14-03 Campaign Financing;
Political Committees; Contributions;
Expenditures – political club activity.
§ 106.011, Florida Statutes.

Dear Messrs. Hanisee, Goen, and Greenwald:

This letter responds to the request of the Pinellas County Democratic Executive Committee, the Tarpon Springs Democratic Club, and the Democratic Club of Wynmoor (collectively “Clubs”), submitted by your attorney, Mark Herron, for an advisory opinion regarding whether certain financial activity would require the Clubs to register as political committees. The Division has the authority to issue you an advisory opinion pursuant to section 106.23(2), Florida Statutes (2013).

You indicated that the Clubs engage in or contemplate the following financial activities:

1. Paying an “annual contribution” to each Club’s respective county Democratic Executive Committee in varying amounts (based upon the size of each Club’s membership) up to \$500;



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2. Paying rent or a fee to each Club's respective county Democratic Executive Committee for use of the executive committee's facilities for meetings and other activities of the Clubs;
3. Receiving monies and making payments for "routine operating expenses" such as utilities, luncheon expenses, or paying appearance fees to public officials or candidates who speak at the Club's meetings;
4. Paying for local newspaper advertising for "20 Reasons Not To Vote For (Candidate X);" and
5. Spending money to hand out flyers at the November voting locations that list the Club's preferred candidates and "suggest how to vote on statewide ballot amendments."

You asked substantially whether these financial activities are "contributions" or "expenditures" within the meaning of section 106.011(16) that would count towards the \$500 threshold to register as a political committee. The answer depends on whether donations received by the political club, and payments made by the club, are made "for the purpose of influencing" a Florida election, which will often be a question of fact that depends on the specific circumstances under which they are accepted and made.

ANALYSIS

Section 106.011(16), requires that "persons other than individuals," including "club[s],"¹ register as political committees if they, in an aggregate amount in excess of \$500 during a single calendar year:

- a. Accept contributions for the purpose of making contributions to any candidate, political committee, affiliated party committee, or political party;
- b. Accept contributions for the purpose of expressly advocating the election or defeat of a candidate or the passage or defeat of an issue;
- c. Make expenditures that expressly advocate the election or defeat of a candidate or the passage or defeat of an issue; or
- d. Make contributions to a common fund, other than a joint checking account between spouses, from which contributions are made to any candidate, political committee, affiliated party committee, or political party.

The terms "contribution" and "expenditure" mean, among other things, the payment of money "made for the purpose of influencing the results of an election."²

¹ § 106.011(14), Fla. Stat.

² § 106.011(5)(a), Fla. Stat. (contribution); § 106.011(10)(a), Fla. Stat. (expenditure). The exceptions to "contribution" and "expenditure" do not apply here.

Response to Question 1

In your first question, you ask whether the “annual contribution” required by the Florida Democratic Party (FDP) Bylaws to be paid by each Club constitutes a “contribution” subject to the \$500 aggregate annual amount which, if exceeded, would require the Club to register as a political committee pursuant to section 106.011(16).

Because the FDP Bylaws require that each Club make an annual payment to a “political party” (the FDP and county Democratic Executive Committee) at least some of the donations made to each Club are made for the purpose of influencing Florida elections and fall within the statutory definition of “contribution.”³ At the time the donations are made to the Club, it has already been determined that a portion of those funds will be used to make a contribution to a political party. Therefore, that portion of the donations constitutes “contributions,” because they are a “payment . . . of money . . . made for the purpose of influencing the results of an election.”⁴

By comparison, donors who give without any predetermination that any or all of the funds will be used to influence Florida elections have relinquished control of their money to the recipient entity (for example, a federal PAC or political committee registered in another state). Because those donations do not constitute “contributions,” the recipient committee would not be required to register as a Florida committee, even if the funds were later used by the recipient committee to make a contribution to a Florida candidate, political committee, affiliated party committee, or political party.⁵ Whether donations were made “for the purpose of influencing” a Florida election, (i.e., “contributions” under section 106.011(5)), will often be a difficult question of fact that depends on the specific circumstances under which the donations were made. Clearer guidance on this issue would require action by the Legislature. Here, however, confusion regarding the purpose of donations to the Club has been obviated by the Bylaws’ requirement that each Club pay an annual contribution to a political party. Because the Clubs are receiving “contributions” (donations to the Club, a portion of which are predetermined to be paid to a political party) for the purpose of making “contributions” (the annual contribution to the party) the Club is required to register as a “political committee” if that activity exceeds \$500 during a calendar year.⁶

³ § 106.011(5), Fla. Stat.

⁴ § 106.011(5)(a), Fla. Stat.

⁵ However, an entity (“combination of two or more individuals” or “person other than and individual”) that makes expenditures in excess of \$500 during a calendar year that expressly advocate the election or defeat of a candidate or the passage or defeat of an issue is required to register as a political committee, regardless of whether that entity received any contributions. § 106.011(16)(a)1.c., Fla. Stat.

⁶ § 106.011(16), Fla. Stat.

Response to Questions 2 and 3

Your second and third questions also turn upon the fact-dependent analysis of whether the money is received or paid “for the purpose of influencing the results of an election.”⁷ Unless the rent or fees paid for the Club’s use of a facility inquired about in your second question exceeds the actual value of that use, then there is no reason to believe the payment was made for the purpose of influencing Florida elections, even if paid to the Democratic Executive Committee. In *Division of Elections Opinion 76-27* (Sept. 2, 1976), the Division opined that funds given “exclusively for the purchase of real property,” even if to the FDP, were not “contributions” because they were “not manifestly given or received to influence the results of an election.” Assuming that the rent or fees paid by the Clubs to the Democratic Executive committee were given exclusively as consideration for the use of the facilities, then they were not manifestly given to influence the results of an election and do not constitute a contribution. Likewise, the “routine operating expenses” (an example of which you gave was utilities) that you inquired about in your third question are not manifestly for the purpose of influencing a Florida election.

However, whether the luncheon expenses and funds expended to invite candidates to speak at the Club’s meetings, also contemplated in your third question, may have been given or received to influence the results of an election, will depend on the circumstances. While having a luncheon may very well not have the manifest purpose of influencing an election, it would be difficult to conceive of a scenario in which a candidate is invited to speak at a Democratic Club for a purpose other than to influence the election in which the candidate is running. The Clubs will have to make the ultimate determination of whether the activity inquired about in your second and third questions constitute “contributions” or “expenditures” under the circumstances.

Response to Questions 4 and 5

Because they constitute expenditures that likely expressly advocate the election or defeat of a candidate or passage or defeat of an issue, the activities described in your fourth and fifth questions would likely subject the Clubs to registration as a political committee if they exceed the \$500 threshold.⁸ Express advocacy is a communication that contains express “magic words” of advocacy, such as “vote for,” “elect,” “support,” “cast your ballot for,” “Smith for Congress,” “vote against,” “defeat,” “oppose,” and “reject.” *Division of Elections Opinion 05-06* (Sept. 21, 2006); *Buckley v. Valeo*, 424 U.S. 1 (1976). Although the actual advertisements or flyers would have to be evaluated on a case-by-case basis, listing reasons “not to vote for” a candidate, “recommend[ing]” candidates to vote for, and “suggest[ing] how to vote” on ballot issues are likely express advocacy.

⁷ § 106.011(5)(a), Fla. Stat. (contribution); § 106.011(10)(a), Fla. Stat. (expenditure).

⁸ § 106.011(16)(a), Fla. Stat. (defining “Political committee” to include an entity that makes expenditures in excess of \$500 during a single calendar year that “expressly advocate the election or defeat of a candidate or the passage or defeat of an issue”).

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SUMMARY

If a political club meets the threshold criteria in section 106.011(16), Florida Statutes, for becoming a political committee (*e.g.*, in an aggregate amount in excess of \$500 during a calendar year accepts “contributions” for the purpose of making contributions to a political committee or makes “expenditures” to expressly advocate the election or defeat of a candidate or the passage or defeat of an issue), the club must register and report as a political committee. Whether donations received by a political club and payments by the club are made “for the purpose of influencing” a Florida election will often be a question of fact that depends on the specific circumstances under which the donations and payments are being accepted and made.

Respectfully,

A handwritten signature in black ink, appearing to read "Maria I. Matthews". The signature is stylized and somewhat cursive.

Maria I. Matthews, Esq.
Director, Division of Elections