



FYI

FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

October 28, 2015

The Honorable Jay Schwartz
Commissioner, City of Pembroke Pines
8310 Northwest 16th Street
Pembroke Pines, Florida 33024

Re: DE 15-04 Campaign Financing;
Expenditures; Advertising – Political
Disclaimers; §§ 106.011, 106.021, 106.143,
106.1437, and 106.1439, Fla. Stat.

Dear Commissioner Schwartz:

You request an advisory opinion on whether refrigerator magnets and a newsletter you intend to distribute must include electioneering communication or political advertisement disclaimer language if paid for with either personal funds or from your reelection campaign funds. Because you are a candidate seeking guidance regarding the application of chapter 106 to actions you propose to take, the Division has authority to issue you an advisory opinion pursuant to section 106.23, Florida Statutes (2015).

FACTS

You currently serve as a Pembroke Pines city commissioner, and your four-year term expires in March 2016. You have a campaign account in anticipation of your reelection campaign, and you are raising money and depositing contributions into that account. You want to distribute refrigerator magnets within your district. The magnets you propose would contain what you characterize as "important community information." They would have your name, title, and picture featured prominently. Featured less prominently would be phone numbers for the police and water department, along with trash and recycling pickup days. Also on the magnet would be an invitation to find your page on Facebook, which, notably, includes reelection campaign information and updates.

You also want to produce a newsletter to circulate within your district. The newsletter you propose publishing and circulating within your district "would serve as a venue for [you] to communicate directly with [your] constituents," and you would author "City and district-related

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pieces to include” in the newsletter. You anticipate also including your “accomplishments during [your] current term of office, as well as goals and objectives for the future.”

Your request for an advisory opinion raises two essential issues.¹ First, which funds—campaign or personal—can be used to purchase the magnets and newsletter? Second, must either the magnets or newsletter include disclaimer language?

ANALYSIS

Issue 1: Which funds can be used to purchase the magnets and newsletter?

The Election Code defines an “expenditure” as

a purchase, payment, distribution, loan, advance, transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit, or gift of money or anything of value *made for the purpose of influencing the results of an election or making an electioneering communication.*

§ 106.011(10)(a), Fla. Stat. (2015) (emphasis supplied).

If the purchase of the magnets or newsletter is an “expenditure,” the funds for the purchase *must* be drawn from your campaign account. *See* §§ 106.021(3), Fla. Stat. (2015). If the purchase of either is not an “expenditure,” the funds for that purchase *cannot* be drawn from your campaign account. *See* § 106.11(1)(a), Fla. Stat. (2015).

You state that you do not intend to “advocate” for your reelection. However, the question is not whether you intend to expressly advocate for your reelection; rather, the question is whether the funds will be used for the purpose of influencing “the results of an election” or to make “an electioneering communication.”² It is not readily apparent from the face of the magnets or the newsletter that you are attempting to influence your own reelection. Utilization of city funds or funds from your office account established pursuant to section 106.141(5), Florida Statutes (2015),

¹ Your four questions are reordered and presented here as two issues for the sake of clarity and brevity.

² “Electioneering communication” means communication that is publicly distributed by a television station, radio station, cable television system, satellite system, newspaper, magazine, direct mail, or telephone and that (1) refers to or depicts a clearly identified candidate for office without expressly advocating the election or defeat of a candidate but that is susceptible of no reasonable interpretation other than an appeal to vote for or against a specific candidate; (2) is made within 30 days before a primary or special primary election or 60 days before any other election for the office sought by the candidate; and (3) is targeted to the relevant electorate in the geographic area the candidate would represent if elected. § 106.011(8)(a), Fla. Stat. (2015).

could indicate that the magnets and newsletter were part of official business. But if your purpose in fact is to influence your reelection in March 2016 then the funds for either purchase could only come from your campaign account.

As you note in your request, the magnets and newsletter would not be “electioneering communications” because they are not being distributed within 30 days prior to any primary election, or 60 days prior to the general election, to be held for your office. *See* § 106.011(8)(a), Fla. Stat. (2015). However, if distributed within those timeframes, they could be electioneering communications if they otherwise fall within the definition of what constitutes electioneering communications, *see id.*; and the funds used for their purchase in turn would be “expenditures” that must come from your campaign account. This would be the case even if the purchases were not made for the purpose of influencing the results of the election for your office.

Issue 2: Do the magnets or newsletters require a disclaimer?

Florida law provides that a disclaimer must accompany a “political advertisement,” “miscellaneous advertisement,” and “electioneering communication.” *See* § 106.143, Fla. Stat. (2015) (political advertisement); § 106.1437, Fla. Stat. (2015) (miscellaneous advertisement); § 106.1439, Fla. Stat. (2015) (electioneering communication).

A “political advertisement” is “a paid expression in a communications medium . . . whether radio, television, newspaper, magazine, periodical, campaign literature, direct mail, or display or by means other than the spoken word in direct conversation, *which expressly advocates the election or defeat of a candidate* or the approval or rejection of an issue.” *See* § 106.011(15), Fla. Stat. (2015) (emphasis supplied). Your proposed magnets do not expressly advocate for your reelection or the defeat of another, and you clearly state that your intended newsletter would not do so, either. Based solely on the limited facts you presented in your request, the proposed magnets and newsletter would not require a “political advertisement” disclaimer.

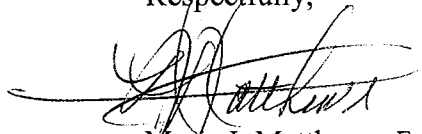
The proposed magnets and newsletter described in your request also would not constitute a “miscellaneous advertisement,” which is defined as an “advertisement, other than a political advertisement, independent expenditure, or electioneering communication, *on billboards, bumper stickers, radio, or television, or in a newspaper, a magazine, or a periodical*, intended to influence public policy or the vote of a public official” *See* § 106.1437, Fla. Stat. (2015) (emphasis supplied). Again, based solely on the facts you present, a “miscellaneous advertisement” disclaimer would not be required.

Finally, as long as the proposed magnets and newsletter are distributed outside the applicable electioneering communication time periods, no disclaimer would be required. But if you do distribute either the magnets or newsletter within 30 days of your city’s primary election (if any) or within 60 days of the general election held for your office, the electioneering communication disclaimer could be required if the definition of electioneering communication is otherwise met. *See, e.g.,* §§ 106.011(8)(a), 106.1439, Fla. Stat. (2015).

SUMMARY

An elected official who distributes refrigerator magnets and a newsletter which are purchased for the purpose of influencing the results of the election for the official's office or to make an electioneering communication are "expenditures," and the funds for those purchases *must* be from the official's candidate campaign account. Conversely, if the purchase of the magnets or newsletter would not be to influence the results of an election (but perhaps, instead, would be in the course of official business), then the purchase of either would not be an "expenditure" and could not be done with funds from the campaign account. The description of the proposed magnets and newsletter as specified in this opinion indicate that no disclaimer language would be required, but if either the magnets or the newsletter were distributed within 30 days of any primary election for the office, or within 60 days of the general election, an "electioneering communication" disclaimer could be required if the definition of electioneering communication is otherwise met.

Respectfully,

A handwritten signature in black ink, appearing to read "M. Matthews", with a long horizontal flourish extending to the left.

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