



FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

April 22, 2016

Mr. Randal Fritz, President
Tea Party of Marion County, Inc.
P.O. Box 772592
Ocala, Florida 34477-2592

FYI

Re: DE 16-03 Campaign Financing;
Registration – Committee
Registration; Advertising; §§
106.011, 106.03, 106.071, 106.0703,
106.1437, Florida Statutes

Dear Mr. Fritz:

You are the president of a for-profit corporation engaged in political activity in Florida. Your request for an advisory opinion indicates that your corporation intends to place nonpartisan advertisements in various media that will direct the public to other media containing partisan information. You ask whether your corporation is required to register as a political committee or an electioneering communications organization, file reports, and/or include disclaimers on such nonpartisan advertisements. The Division of Elections has the authority to issue you an advisory opinion pursuant to section 106.23(2), Florida Statutes.

FACTS

Your for-profit corporation proposes to spend "ordinary corporate funds" on advertisements through newspapers, newspaper websites, and the radio, at a total cost exceeding \$500 during a calendar year. You state that these advertisements will be "completely non-partisan," but they will direct readers and listeners to your corporation's website, which in turn will contain express advocacy for and against candidates and ballot issues. You indicate the proposed advertisements will read as follows:

Division of Elections
R.A. Gray Building, Suite 316 • 500 South Bronough Street • Tallahassee, Florida 32399
850.245.6200 • 850.245.6217 (Fax) • DOS.MyFlorida.com/elections



Local Group of Marion County, Florida, Inc.
Your 2016 On-line Election Headquarters!

★ Sample County Ballot★
★ Sample Ballot Issue Questions★
★ Transcripts of Non-Partisan Debates★
★ Links to Voter Maps & Elected Officials★
★ In-depth Completed Candidate Questionnaires★
★★★ Candidate Spreadsheet with links to Candidates★★★

www.localgroupmc.com
statement of sponsorship to be placed here per § 106.1437

You ask five related questions¹ pertaining to these facts. Please note that this advisory opinion is limited to answering the questions you present in your facts relating to your nonpartisan advertisements. The Division nonetheless notes that any advertisements on your website would be independently subject to the appropriate disclaimer requirements specified in chapter 106.

ANALYSIS

Questions 1 and 2. You essentially ask whether, if your corporation makes nonpartisan advertisements in the manner described in the facts above, such nonpartisan advertisements will require your corporation to register and file reports as a political committee or an electioneering communications organization under section 106.03(1), Florida Statutes.

Florida law generally requires any combination of two or more individuals, or a person other than an individual (such as a corporation), to register as a political committee if, among other things, it makes “expenditures” in excess of \$500 in one year that “expressly advocate” the election or defeat of a candidate or the passage or defeat of an issue. *See* § 106.011(16)(a)(1)(c.), Fla. Stat. (defining “political committee”); § 106.011(14), Fla. Stat. (defining “person” as “an individual *or a corporation . . .*”) (emphasis supplied); § 106.03, Fla. Stat. (requiring political committees to register as such).² “Express advocacy” is a term not explicitly defined in Florida law; however, the term has been addressed by the United States Supreme Court and the advisory opinions of the Division. *See, e.g., Buckley v. Valeo*, 424 U.S. 1, 44 n.52 (1976) (indicating that “express advocacy” means communication that contains “express words of advocacy of election or defeat, such as ‘vote for,’ ‘elect,’ ‘support,’ ‘cast your ballot for,’ ‘Smith for Congress,’ ‘vote against,’

¹ Your five questions have been consolidated into three for the sake of brevity and clarity.

² Certain corporations, however, are specifically excepted from the definition of “political committee.” *See* § 106.011(16)(b)(2.), Fla. Stat.

‘defeat,’ [or] ‘reject’”); *see also Div. of Elections Op. 05-06* (Sept. 21, 2005). An “expenditure” is essentially any payment of money or anything of value “made for the purpose of influencing the results of an election or making an electioneering communication.” *See* § 106.011(10)(a), Fla. Stat.

Even if an entity does not engage in actions that cause it to be a “political committee,” it may still be an “electioneering communications organization” and be required to register as such if it makes or accepts contributions for the purpose of making electioneering communications. *See* §§ 106.011(9), 106.03(1)(b), Fla. Stat. An “electioneering communication,” in turn, is “communication that is publicly distributed” via certain enumerated media that “[r]efers 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.” *See* § 106.011(8)(a), Fla. Stat.

Based on the facts you present, your corporation’s proposed nonpartisan advertisements, which do not mention or allude to a candidate or issue, would not appear to be “express advocacy” or “electioneering communications” under Florida law. Again, under the facts you present, expenditures that do *not* expressly advocate are not counted toward the \$500 threshold of section 106.03(1)(a); and expenditures that do not qualify as “electioneering communications” do not cause an entity to become an electioneering communications organization.³ *See* §§ 106.011(8), (9), (16)(a), 106.03, Fla. Stat.

Questions 3 and 4. You ask whether your corporation, if it advertises in the manner described in the facts above, will be subject to the registration requirements, reporting requirements, penalty provisions, and disclaimer requirements of section 106.071, Florida Statutes.

There is no indication from the facts you disclose that section 106.071 would apply to your corporation’s nonpartisan advertisements, because that statute contains requirements that only

³ Please note, however, that if your corporation were considered a political committee or electioneering communications organization for other reasons apart from its nonpartisan advertisements as described in the request, it would be required to report any “expenditures.” *See* § 106.011(10), Fla. Stat. (defining “expenditure”); § 106.07(1), Fla. Stat. (requiring political committees to file regular reports of all expenditures made); § 106.0703(1), Fla. Stat. (requiring electioneering communications organizations to file regular reports of all expenditures made). The analysis in this opinion is limited to the facts you presented, which deal with the nonpartisan communications you mention in your request, and whether *those* communications would cause your corporation to be considered a political committee or electioneering communications organization. Also, be advised that certain corporations and business entities may fall within the exception to the definition of a political committee “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.” *See* § 106.011(16)(b)2., Fla. Stat.

apply to persons who make expenditures for electioneering communications or “independent expenditures.” See § 106.071(1), Fla. Stat. As discussed in the answers to questions one and two above, your corporation’s proposed nonpartisan advertisements, which do not mention or allude to a candidate or issue, do not appear to be “electioneering communications.” The advertisements also do not appear to be “independent expenditures,” because to be an independent expenditure, there must be “express advocacy.” See § 106.011(12)(a), Fla. Stat. (defining an “independent expenditure” as “an expenditure by a person for the purpose of *expressly advocating* the election or defeat of a candidate or the approval or rejection of an issue,” among other requirements) (emphasis supplied). This being said, the website to which your proposed advertisement refers would be independently subject to the requirements and regulations of chapter 106. Likewise, the contents of that website might independently subject your corporation to registration requirements.

Question 5. You ask whether your corporation, if it advertises in the manner described in the facts above, will be subject to the reporting requirements and penalty provisions of section 106.0703, Florida Statutes.

There is no indication from the facts you disclose that section 106.0703 would apply to your corporation’s nonpartisan advertisements, because section 106.0703 contains requirements and penalties that only apply to electioneering communications organizations. As discussed in the answers to questions one and two above, your corporation’s proposed nonpartisan advertisements, which do not mention or allude to a candidate or issue, do not appear to be “electioneering communications.”

Notwithstanding the responses to the questions above, as you have already noted in your request for an advisory opinion, section 106.1437, Florida Statutes, could be triggered. Section 106.1437 requires that certain “miscellaneous advertisements” must contain a statement of sponsorship, as follows:

Any 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, shall clearly designate the sponsor of such advertisement by including a clearly readable statement of sponsorship. If the advertisement is broadcast on television, the advertisement shall also contain a verbal statement of sponsorship

§ 106.1437, Fla. Stat. Although your corporation’s proposed advertisements may not be “political advertisements” or “electioneering communications,” depending on the factual circumstances, they might be considered “miscellaneous advertisements” and subject to section 106.1437.

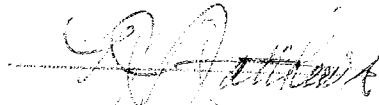
SUMMARY

Under the facts presented in this opinion, expenditures made by an entity for nonpartisan advertisements that do not expressly advocate—nor which allude in any way to a candidate or

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issue—do not count toward the \$500 threshold that would make the entity a “political committee”; nor are such advertisements “electioneering communications” that would cause the entity to be an “electioneering communications organization” under chapter 106. Entities that do not expressly advocate or make electioneering communications are not subject to the requirements of sections 106.071 or 106.0703, Florida Statutes. However, depending on factual circumstances, even if certain advertisements are not considered “political advertisements” or “electioneering communications,” they may be considered “miscellaneous advertisements” subject to the requirements of section 106.1437, Florida Statutes.

Respectfully,

A handwritten signature in black ink, appearing to read "Maria I. Matthews", is written over a horizontal line.

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