

# Chapter 106, Florida Statutes - Campaign Finance

**Gary J. Holland, Esq.**  
**Assistant Director, Division of Elections**  
**Department of State**  
**January 30, 2013**



# AGENDA

- **Political Organizations**
- **Contribution Limits – a few items**
- **Disposition of Surplus Funds**

# Chapter 106 Political Organizations

- Political Parties – 18\* (16 are minor parties)
- Affiliated Party Committees (APCs) – 0\*
- Political Committees (PCs) – 258\*
- Electioneering Communications Organizations (ECOs) – 154\*
- Committees of Continuous Existence (CCEs) – 689\*

\* Number registered with Div. of Elections as of Dec. 2012



# Meaning of “Expressly Advocate”

- The language of the communication, by its express terms, makes appeal to the viewer/reader/listener to take a specific electoral action for or against a particular candidate/issue
- For example: vote for, vote against, elect, support, cast your ballot for, Smith for Mayor, defeat, oppose, reject (or similar words)

# Independent Expenditure

(s. 106.011(5), F.S.)

## Expenditure made for the purpose of:

- **Expressly advocating** the election or defeat of a candidate or the approval or rejection of an issue; and
- **Not coordinated** with, or made upon consultation with, any candidate, PC, or agent of a candidate or PC.

# Political Committees



**Definition** - *see* s.106.011(1)(a); **for filing requirements**, *see* ss. 106.03 and 106.07, FS

A combination of 2 or more individuals, or a “person” other than an individual (*e.g.*, a business entity, law firm, etc.), that, in an amount > \$500 in a calendar year:

- Accepts contributions to give to candidates, PCs, CCEs, APCs, or political parties; or
- Accepts contributions or makes expenditures for purpose of “**expressly advocating**” the election/defeat of candidate or issue.

# Political Committee

Also, a PC =

- The sponsor of a **proposed constitutional amendment by initiative** who intends to seek the signatures of registered electors.

# Organizations that are not PCs

- **CCEs, ECOs, APCs, and political parties**
- **Corporations regulated by Chapter 607 and 617, FS, and other business entities formed for purposes other than to support/oppose issues or candidates if:**
  - Political activities are limited to making contributions to candidates, parties, APCs, & PCs;  
or
  - Making expenditures to support or oppose issues;  
and
  - No “contributions” are received by such entities.



# PCs – Where to File?

(s. 106.07, F.S.)

- **Division of Elections** – if organized to support or oppose statewide, legislative, or multicounty candidates or issues
- **Supervisor of Elections** – if organized to support or oppose county or less than county (except municipal) candidates or issues
- **Municipal Clerk** – if organized to support/oppose municipal candidates or issues

[If would be required to file in 2 or more locations, need only to file with Division of Elections.]

# PCs – When to File?

(s. 106.03, F.S.)



- PC must file a statement of organization w/in 10 days after its organization:
  - When PC receives contributions or makes expenditures during a calendar year in an aggregate amount exceeding \$500; **or**
  - When PC seeks voter signatures on an initiative.
- Except: PC shall immediately file a statement of organization when PC is organized within 10 days of any election.

# PCs – What to File?

- DS-DE 5 - Statement of Organization
- DS-DE 41 - Registered Agent Appointment
- DS-DE 6 - Appointment of Campaign Treasurer and Depository

Forms are on Division of Elections  
webpage

# PCs – What can they do?

- Accept contributions to **contribute to candidates, other PCs, CCEs, APCs, or political parties.**
- Accept contributions & make expenditures for purpose of **expressly advocating** the election/defeat of candidate/issue.
- Make **independent expenditures**
- Make **electioneering communications** (if the PC supports candidates)

**NOTES** (s. 106.11, F.S.): (1) PCs must have specific depository for its funds designated “(Name of PC) Campaign Account.”

(2) Funds in account may be used only for PC activity and only for purpose of influencing the results of an election.

# PCs – Contribution Limits

(s. 106.08, F.S.)



## ■ Contributions to the PC:

- If support/oppose issues *only*: No limit
- If support/oppose candidates: \$500 per election\*
- If support/oppose both: \$500 per election\*

## ■ Contributions from the PC:

- To candidate: \$500 per election\*
- To a PC: No limit if “issue only” PC; otherwise, \$500
- To a political party: No limit
- To a CCE: No limit
- To ECO: No limit

**\*Primary & General elections are separate elections**

# Chapter 106 Interplay -- Making Independent Expenditures & PCs

- **If an individual:** No limit on amount of independent expenditures, but if **\$5000** or more, must file reports as if was a PC. (s. 106.071, F.S.)
- **If a corporation or business entity:**
  - If independent expenditure is for/against an **issue**: No limit, but if **\$5000** or more, must file reports as if was a PC. (s. 106.071, F. S.)
  - If independent expenditure is for/against a **candidate** > **\$500**: no limit, but must register as PC and file reports as PC. (s. 106.011(1)(b)2., F.S.)

# **Electioneering Communication Organizations (ECOs)**

*(see ss. 106.011(19), 106.03, and  
106.0703, F.S.)*

# Definition (s. 106.011(19), F.S.)

- **ECO** = any group (not a political party, APC, PC, or CCE), whose election-related activities are limited to making expenditures for electioneering communications or accepting contributions for purpose of making electioneering communications and whose activities would not require them to register as a political party, PC, or CCE.
- **Key:** ECOs are limited to being involved with “electioneering communications” – ECOs may not “expressly advocate.”





# Electioneering Communication

– Defined (s. 106.011(18), F.S.)

- ❑ Any communication publicly distributed by a TV station, radio station, cable TV system, satellite system, newspaper, direct mail, or telephone that:
  - ❑ refers to or depicts a clearly identified candidate without expressly advocating for/against a candidate's election/defeat **BUT is susceptible of no reasonable interpretation other than an appeal to vote for or against a specific candidate; and**

# Electioneering Communication

## – Defined (continued)

- ❑ Is made within 30 days before a primary/special primary, or 60 days before any other election for office sought by the candidate; and
- ❑ Is targeted to the relevant electorate in the geographic area the candidate would represent if elected.

# Statutory Exceptions to ECs:

- Communication that is an editorial endorsement or any news story by the media
- Communication that = a public debate or forum with at least two opposing candidates or opposing sides on an issue
- An already existing organization's newsletter distributed only to members of the organization

# ECO Comparison Summary:

## Federal v. Florida

**Florida law** essentially tracks Federal law, except Florida:

- **Expands the method of communication** to include telephone and some print media;
- **Reduces the target audience** from the federal requirement of 50,000 or more to merely being targeted to the relevant electorate; and
- **Reduces the threshold expenditure amount for ECO registration** purposes from exceeding \$10,000 to exceeding \$5,000 in a calendar year.



# ECOs – Where to File?

- **Division of Elections** – for statewide, legislative, or multicounty election
- **Supervisor of Elections** – for county or less than county (except municipal) elections
- **Municipal Clerk** – for municipal elections

**If ECO required to file in 2 or more locations, need only file with Division of Elections.**



# ECOs – When to File?

(s. 106.03, F.S.)

## 2 possible initial filing times:

1. If makes expenditures for EC > \$5000 during the “30/60-day” window, it must register as an ECO within 24 hours of making such expenditures; or
2. If makes expenditures for EC > \$5000 before the “30/60-day” window, it must register as an ECO within 24 hours after the beginning of the “30/60-day” window.

# ECOs – What to File?

- DS-DE 103 - Statement of Organization
- DS-DE 41 - Registered Agent Appointment

Forms are on Division of Elections  
webpage

# ECOs – What Can They Do?

- Activities strictly are limited to electioneering communications
- May contribute to other ECOs
- May not contribute to candidates, PCs, or political parties
- May not expressly advocate; thus, may not make independent expenditures

**NOTES: (1) ECOs may use regular organization's checking account; need not designate a campaign depository, but must have a treasurer to file reports.**

**(2) May not use credit cards (s. 106.0703(8), F.S.).**



# ECOs – Contribution Limits

- **Contributions to the ECO:** No limit
- **Contributions from the ECO:**
  - No limit, but remember its “election-related activities” must only be for electioneering communications
  - **(Therefore: ECO is limited to making its own electioneering communications or contributing to other ECOs).**



# **Committees of Continuous Existence (CCEs)**

**(Section 106.04, F.S.)**

# CCE -- Defined

A group, organization, association, or other entity **involved in making contributions** to candidates, PCs, or political parties, which:

- 1) Is organized and operated IAW **written charter or bylaws** which contain procedures for elections of officers and membership;
- 2) At least **25% of income**, excluding interest, **comes from dues** of its members; and
- 3) Is certified by Division of Elections.

# CCEs – Where to File?

- CCEs file only with the

**Division of  
Elections**

# CCEs – What to File?

- **DS-DE 1**: CCE Application for Certification
- **DS-DE 41**: Registered Agent Appointment
- CCE **Charter or Bylaws**
- **Dues or Assessment Schedule** for members
- **Financial statement** for preceding 12 months.

# CCEs – What can they do?

- CCE may exist for other purposes, but for political activities, it **can only make contributions to candidates, committees, ECOs, or political parties**
- May not make independent expenditures
- May not make electioneering communications
- Must register as a PC if makes expenditures to directly support or oppose issues.

# CCEs – Contribution Limits



- **Contributions to the CCE:** No limit as long as requirements as CCE are maintained.
- **Contributions from the CCE:**
  - To candidate or PC supporting candidates: \$500 per election
  - To ECO or political party: No limit
  - To PC supporting issues: Not to exceed 25% of CCE's annual income as reported on prior year's annual report.

# **Candidate Contribution Limits**

**-- A few Items**



# Contribution Limitations

(s. 106.08, FS)

- ❑ A candidate may not receive > \$500 per election from any “person,” except a political party or affiliated party committee.
- ❑ An unemancipated child under the age of 18 years of age may not give > \$100 per election.
- ❑ A candidate may give an unlimited amount from candidate’s personal funds. (Properly reported loans by candidate to his/her campaign may be repaid at anytime the account has sufficient funds to do so — s. 106.11, FS)

# Cash Contributions - Limitations

(s. 106.09, FS)

**Cash** contributions and contributions by **cashier's check** to a candidate may not exceed **\$50** in the aggregate per election per contributor.

**Note: Money orders and travelers checks are not considered “cash.”**

# Contributions

(s. 106.08, FS)

- Any contribution received by an opposed candidate, their treasurer, or deputy treasurer less than five days prior to an election must be returned.



# **Disposition of Surplus Funds**

# Termination Reports

(s. 106.141, FS)

- A termination report must be filed within 90 days of withdrawing as a candidate, becoming unopposed, elected, or eliminated.
- Funds must be disposed of -- account need not be closed.

# After the Campaign

(s. 106.075, FS)

**Loan Report** - A person who is elected to office must report all loans, exceeding \$500 in value, made to him or her and used for campaign purposes, made within the 12 months preceding his or her election to office, to the filing officer, within 10 days of being elected.

# After the Campaign

(ss. 106.11 & 106.141, FS)

Once a candidate becomes unopposed, elected, eliminated or withdraws, the individual may only expend funds for the following:

- ❑ Purchase thank-you advertising (for up to 75 days).
- ❑ Pay for items obligated.
- ❑ Pay for expenditures necessary to close down the campaign office and to prepare final report.
- ❑ Pay candidate back, in full or in part, for any contributions contributed to own campaign

# After the Campaign

(s. 106.141(6), FS)

- If candidate qualified by the petition method and has surplus funds, the candidate must first pay any **petition verification fees** that were waived due to filing an undue burden oath; thereafter, if surplus funds remain, then must reimburse the 1% **election assessment fee** to the filing officer prior to disposing of the surplus funds.



# Disposing of Surplus Funds

(s. 106.141(4), FS)

Can dispose of by any combination of:

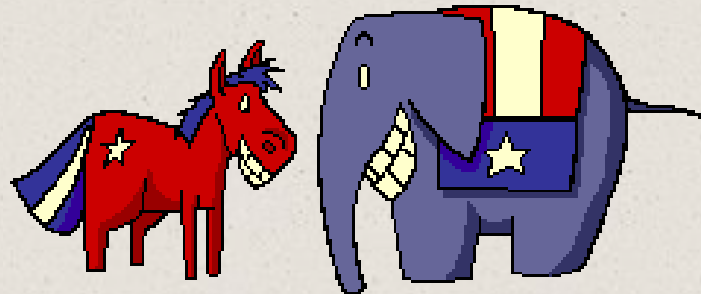
1. **Return contributions pro rata** to each contributor.
2. **Donate funds to a charitable organization or** an organization that meets the qualifications of s. **501(c)(3)** of the Internal Revenue Code.

*(continued on next slide)*

# Disposing of Surplus Funds

(ss. 106.141(4) & (5), FS)

3. Give funds to applicable **general revenue** fund.
4. Give funds to candidate's **political party**.
5. For those candidates who were elected, transfer funds to an **office account**.



# Office Accounts

(s. 106.141(5), FS)

- **Maximum allowable amount is based upon elected office** (*see* s. 106.141(5), FS); *e.g.*, for county office, can have \$2500 x # years in term
- Can **only be used for legitimate expenses in connection with public office** (*e.g.*, travel, any personal taxes payable on office account, or expenses incurred in operation of the office)
- Must be **separate from any other account**

# Office Accounts

(s. 106.141(5), FS)

- **Official must file reports** on the 10<sup>th</sup> day following the end of the quarter until all funds are gone.
- **Upon leaving office**, official must give the remaining funds to:
  - A 501(c)(3) charitable organization; or
  - Applicable gov't general revenue fund

# Political Organizations

## Disposition of Surplus Funds

- Disposition of funds upon termination of the organization for PCs and ECOs must be stated in the Statement of Organization at the time of their registration. (s. 106.03, F.S.)
- Disposition not mandated in statute for funds upon termination of CCEs, APCs, and political parties.

# CONCLUSION

■ **Forms, publications, and answers to many Chapter 106 questions can be found on the Division of Elections' website:**

**<http://election.myflorida.com>**

# Department of State

