



Florida House of Representatives

Marco Rubio, Speaker
Office of the General Counsel

Jeremiah M. Hawkes
General Counsel

FORMAL OPINION 07-07

To: The Honorable Marco Rubio, District 111

Prepared By: Jeremiah Hawkes, General Counsel

Date: October 18, 2007

Re: Solicitation of Funds for a 501(c)(4)

You inquired whether the expenditure ban found in ss. 11.045(4)(a) or 112.3148, Florida Statutes would prevent you from soliciting funds from lobbyists for Floridians for Property Tax Reform, Inc., (the "Corporation"), a tax-exempt organization under s. 501(c)(4) of the Internal Revenue Code. You also inquired whether if you did solicit on behalf of the Corporation if you would have to comply with the registration requirements of s. 106.0701, Florida Statutes.

Your inquiries are both answered in the negative.

BACKGROUND

Your letter of October 8, 2007, indicates that you wish to solicit funds from lobbyists and principals of lobbyists to benefit the activities, mission and cause of the Corporation. The Corporation was formed on March 14, 2007. The Corporation has notified the Internal Revenue Service that it is a tax-exempt organization under Section 501(c)(4) of the Internal Revenue Code. Additionally, the Corporation has registered with the Florida Department of State, Division of Elections as a political committee, under Chapter 106, Florida Statutes.

You are not a member of the Board of Directors of the Corporation nor did you establish the Corporation. You will not participate in the day to day activities of the Corporation nor direct where the funds of the corporation are spent. You will not participate in the activities of the Corporation as they relate to its mission, nor will you lend your likeness

or name to any informational, educational, promotional or any other such material produced by the Corporation. Your sole duty and relationship relating to the Corporation is to solicit and possibly receive contributions for the Corporation.

You will not receive any compensation of any kind, whether monetary or in-kind, from the Corporation or any other entity for soliciting funds for the Corporation. Any expenses that may be incurred by you will not be reimbursed by the Corporation. You will not receive any reimbursement for travel, long distance telephone charges, time spent soliciting and receiving contributions, or any other such potential expenses.

No State of Florida resources will be utilized in connection with my solicitation and/or receipt of contributions to the Corporation.

ANALYSIS

House Rule 15.4(a) provides that "a member shall scrupulously comply with the requirements of all laws related to the ethics of public officers."

Section 11.045(4)(a), Florida Statutes was created in January 2006 and provides:

Notwithstanding s. 112.3148, s. 112.3149, or any other provision of law to the contrary, no lobbyist or principal shall make, directly or indirectly, and no member or employee of the Legislature shall knowingly accept, directly or indirectly, any expenditure, except floral arrangements or other celebratory items given to legislators and displayed in chambers the opening day of a regular session.

The definition of expenditure as used above is found in 11.045(1)(d):

Expenditure means a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying. The term "expenditure" does not include contributions or expenditures reported pursuant to chapter 106 or federal election law, campaign-related personal services provided without compensation by individuals volunteering their time, any other contribution or expenditure made by or to a political party, or any other contribution or expenditure made by an organization that is exempt from taxation under 26 U.S.C. s. 527 or s. 501(c)(4).

So the terms of 11.045 specifically exempt contributions to 501(c)(4) corporations from the terms of the expenditure ban in s. 11.045(4)(a), F.S.

However, it should be noted that when s.11.045(4)(a), F.S. was put together the presiding officers put together an interpretive memo which noted that while the members could solicit funds for 501(c)(4) organizations this provision could not be used as artifice to allow lobbyists and principals to get around the provisions of the expenditure ban. (See

Interim Lobbying Guidelines for the House and Senate, p. 14.) So the contributions must be bona fide contributions to the group and cannot be earmarked for the benefit of a member.

Section 112.3148, Florida Statutes places restrictions on the type of gifts members can receive. This provision will generally not apply if you comply with the strictures above since the contributions will not be for your benefit. You should not receive any cash contributions and you should make sure all contributions comply with federal and state election laws.

Section 106.0701(1), Florida Statutes provides:

The Governor, Lieutenant Governor, members of the Cabinet, state legislators, or candidates for such offices who directly or indirectly solicit, cause to be solicited, or accept any contribution on behalf of an organization that is exempt from taxation under s. 527 or s. 501(c)(4) of the Internal Revenue Code, which such individuals, in whole or in part, establish, maintain, or control, shall file a statement with the [Division of Elections] within 5 days after commencing such activity on behalf of the organization.

You have indicated that you did not establish, and do not maintain or control, in whole or in part, the Corporation. Therefore this requirement would not apply to you.

CONCLUSION

Since you did not establish or have control of the Corporation, you would not be violating House Rule 15.4(a) or sections 11.045(4)(a) or 112.3148, Florida Statutes should you choose to solicit funds on behalf of the Corporation from lobbyists or principals.

This opinion is prepared in accordance with House Rule 15.8. Pursuant to that rule this opinion could be subject to revision.

cc: Office of the Speaker
Office of the Speaker pro tempore
Rules & Calendar Council
Committee on Ethics & Elections
Commission on Ethics
Steven Kahn, Senate Counsel
Jay Vail, Senate Counsel
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