

A statute addressed in this opinion has changed.

Please consult current Florida law.

April 14, 2006

Mr. Samuel B. Ings
Chair, Recall Dyer Committee
c/o Frederic B. O'Neal, Attorney at Law
P.O. Box 842
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RE: DE 06-06
Municipal Recall Elections; Registration and
Reporting by Recall Committees; Voter
Registration Information; §§ 98.095, 98.0979;
100.361, 106.011, 106.03, 106.07, Florida Statutes

Dear Mr. Ings:

This is in response to your request in a letter dated November 16, 2005, for an advisory opinion relating to municipal recall elections. Under section 106.23(2), Florida Statutes, the Division of Elections has authority to issue advisory opinions to certain enumerated persons or entities, including a person or organization engaged in political activities, regarding actions taken or proposed to be taken as relates to any provision or possible violation of the Florida Election Code (constituting chapters 97-106, Florida Statutes). You are the chair of the Recall Dyer Committee. Therefore, the Division has authority to issue this opinion to you regarding action that you have taken or propose to take on behalf of the recall committee.

You have advised that the Recall Dyer Committee has spearheaded a municipal election effort to recall the mayor for the City of Orlando, John H. "Buddy" Dyer. Our understanding is that these efforts are currently suspended until such time as the Division of Elections issues this opinion. You have also stated that the Committee has not received any contributions or made any expenditures for this recall effort to date.

You have asked essentially the following two questions:

1. When is a recall committee required to register as a "political committee" with the clerk for the City of Orlando in accordance with chapter 106, Florida Statutes, specifically relating to registration, campaign finance reports, and appointment of a treasurer?
2. May a recall committee use voter registration information for the purpose of gathering signatures for a recall petition?

Question 1

In response to question 1, the brief answer is that a recall committee is required to register with the municipal clerk pursuant to the requirements of chapter 106, Florida Statutes, when the statutory definition for “political committee” is met and the committee anticipates receiving contributions or making expenditures for the purpose of expressly advocating for the election or defeat of a candidate or the passage or defeat of an issue and those contributions or expenditures exceed \$500 in the aggregate in a single calendar year.

The Florida Election Code contains provisions governing the uniform procedures to be used statewide to remove an official of a municipality or charter county (hereinafter “municipality”) from office. See section 100.361, Florida Statutes. The recall “committee” is statutorily designated by default as consisting of those electors who are making the charges circulated in the recall petition and those electors who are signing the petition for the purpose of recalling a specifically named public official based on one or more of the seven statutory grounds for removal. The grounds must be stated in 200 or less words. A person is to be designated as chair to act on behalf of the “committee.” The recall committee must engage in two phases of signature gathering for a recall petition.

A successful recall petition drive can accomplish the goal of municipal officer’s removal in two ways. First, rather than let the matter proceed to an election recall, the municipal officer could choose to resign within 5 days after receiving notice of the requisite signatures in the second round of petition signature-gathering. Second, if the municipal officer does not resign, the municipal officer could be removed by a successful vote in a recall election called by the chief judge of the respective judicial circuit.

The law does not require the recall committee to register prior to or during the recall petition signature-gathering process except when its activities trigger the provisions of Chapter 106, Florida Statutes. See DE 81-06 (November 19, 1981). Subsection (7) of section 100.361, Florida Statutes, provides, in part, that

OFFENSES RELATING TO PETITIONS.—

. . . No expenditures for campaigning for or against an officer being recalled shall be made until the date on which the recall election is to be held is publicly announced. *The committee and the officer being recalled shall be subject to chapter 106.* No person shall employ or pay another to accept employment or payment for circulating or witnessing a recall petition. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor of the second degree and shall, upon conviction, be punished as provided by law. [italics added for emphasis]

Chapter 106, Florida Statutes, imposes certain registration and reporting requirements on persons and entities for expenditures made and contributions received in connection with political activities. The definition for a “political committee” and the statutory thresholds for reporting under this chapter have undergone significant legislative changes over the years without substantive commensurate changes to the municipal recall provisions in section 100.361, Florida Statutes. In 2002, the term “political committee” was more narrowly redefined as activities associated with *express advocacy* (i.e., using terminology such as “vote for,” and “vote against,”) in support or defeat of a candidate or the passage or

defeat of an issue’. See ch. 2002-197, Laws of Florida. Section 106.011(1), Florida Statutes, currently defines a “political committee” as:

1. A combination of two or more individuals, or a person other than an individual, that, in an aggregate amount in excess of \$500 during a single calendar year:
 - a. Accepts contributions for the purpose of making contributions to any candidate, political committee, committee of continuous existence, or political party;
 - b. Accepts contributions for the purpose of *expressly advocating* the election or defeat of a candidate or the passage or defeat of an issue;
 - c. Makes expenditures that *expressly advocate* the election or defeat of a candidate or the passage or defeat of an issue; or
 - d. Makes contributions to a common fund, other than a joint checking account between spouses, from which contributions are made to any candidate, political committee, committee of continuous existence, or political party;
2. The sponsor of a proposed constitutional amendment by initiative who intends to seek the signatures of registered electors.

[emphasis added]

The term “issue” is further defined in section 106.011(7), Florida Statutes, to include “any proposition for which a petition is circulated in order to have such proposition placed on the ballot at any election.”

Note that in 2004, the Florida Legislature again revised the definition for political committee to add reference to “electioneering communications” (defined in section 106.011(18), F.S.) in order to subject to registration, reporting and sponsor disclaimer requirements those paid activities associated with *non-express advocacy* made in a communications medium and in connection with a non-referendum issue of public interest or that included a reference to or likeness of a candidate, without outright expressed support or opposition to an issue or candidate.

It does not appear that the Florida Legislature intended to require a municipal recall committee to register and report prior to initiating a recall effort or necessarily during the recall petition signature-gathering process unless or until the committee met the registration and reporting requirements of chapter 106, Florida Statutes. First, under section 106.03(1), Florida Statutes, a political committee (which is defined in association with activities of ‘express advocacy’ in support or opposition to a candidate or issue) is required to register *when* it anticipates receiving contributions or making expenditures in excess of the aggregate amount of \$500, or *when* it is seeking the signatures of registered electors in support of an initiative. The Florida Legislature added the initiative language in 1979 but made no reference to petition signature-gathering activities associated with other types of public measures such as local referendum petition or a municipal recall petition. See ch. 79-366, Laws of Florida. The Florida Legislature also has not made any commensurate substantive changes to section 100.361, Florida Statutes, to conform to the changes in Chapter 106, Florida Statutes.

Second, the Florida Legislature statutorily curtailed the extent to which a recall committee could spend during the petition-signature gathering process of the municipal recall petition effort in several ways. Section 100.361(7), Florida Statutes, states no “expenditures for campaigning for or against an officer being recalled shall be made until the date on which the recall election is to be held is publicly announced.” A recall election is only called by the chief judge of the respective judicial circuit after the requisite number of signatures was gathered during the second phase of signature-gathering and if the municipal officer does not resign in response to notice of the requisite signatures obtained. Moreover, a recall committee is prohibited from expending any funds to hire or pay someone for circulating or witnessing a recall petition.

Third, even the statutory terms “contribution” and “expenditure” under sections 106.011(3), and 106.011(4)(a), Florida Statutes, respectively, are defined in part within the context of monies for the purpose of influencing the results of an election:

. . . (3) “Contribution” means:

(a) A gift, subscription, conveyance, deposit, loan, payment, or distribution of money or anything of value, including contributions in kind having an attributable monetary value in any form, made for *the purpose of influencing the results of an election* or making an electioneering communication.

(b) A transfer of funds between political committees, between committees of continuous existence, or between a political committee and a committee of continuous existence.

(c) The payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to a candidate or political committee without charge to the candidate or committee for such services.

(d) The 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, and the term includes any interest earned on such account or certificate. . .

. . . (4)(a) “*Expenditure*” means 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. . . .

[emphasis added].

Therefore, a municipal recall committee is not required to register before the committee initiates a recall petition drive or expends monies or accepts contributions in support of signing the municipal recall petition during the recall petition gathering process. The activities associated with obtaining signatures for a petition are not deemed *express advocacy* for the support or defeat of an issue until the recall election is actually called. The municipal recall committee is required to register with the municipal clerk pursuant to section 106.03(2)(c), Florida Statutes, if it accepts contributions in anticipation of

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influencing the outcome of a recall election if one were to be called even though statutorily those contributions could not be expended until the election is actually called based on section 100.361(7), Florida Statutes. The activity of influencing the outcome of a recall election then could constitute *express advocacy*. Once a recall election is called, the municipal recall committee would have to register as a political committee just as any other person, group or organization if the committee's expenditures or contributions exceeded the aggregate amount of \$500, and would also have to satisfy all reporting and other requirements under chapter 106, Florida Statutes.

Question 2

In response to question 2, the brief answer is that the law on voter registration information and records has changed since you first posed the question. Effective January 1, 2006, a recall committee is no longer required to affirm that it is one of an enumerated class of persons, entitled to inspect and copy voter registration information in the records in the custody of the supervisors of elections *and* in the custody of the Department of State through the Florida Voter Registration System. The recall committee may now obtain such information just as any member of the public may now also obtain such information, subject to the redaction of information that is confidential and/or exempt under law.

As of January 1, 2006, the Florida Voter Registration System (FVRS) constitutes the *official* list of registered voters in the state, rather than the individual voter registration lists in each of the 67 counties. In part to make way for the implementation of the FVRS as required by the federal Help America Vote Act, the Florida Legislature repealed sections 98.095 and 98.0979, Florida Statutes, which only allowed the public to inspect, not copy, voter registration information. An exception existed specific governmental or political persons or entities who could obtain these records upon executing an affirmation that they would use the information solely for political or governmental purposes. With the repeal of these two sections, the Florida Legislature expanded public access to such information in that now anyone can obtain, for any purpose, a copy of voter registration information and records in the custody of the supervisors of elections *and* in the custody of the Department of State through FVRS. However, specific personal identifying information such as social security numbers and drivers' license numbers remains exempt pursuant to section 98.0585, Florida Statutes (2006).

Therefore, as of January 1, 2006, a municipal recall committee need not be a registered political committee in order to be entitled to the voter registration information. The municipal recall committee can inspect and use voter registration information, just as any person or entity, for any purpose including signature-gathering for a petition drive, except to the extent that certain information in those records will be redacted as confidential and exempt under law prior to disclosure.

SUMMARY

Unlike a committee formed to circulate an initiative petition, a municipal recall committee consists, by statutory default, of those electors making the charges in the municipal recall petition and those electors signing the municipal recall petition. The committee is not required to register under chapter 106, Florida Statutes, before it initiates a recall petition drive. A municipal recall committee is not required to register before it expends or accepts contributions in support of signing the municipal recall petition as

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such activity does not constitute express advocacy. The recall committee's ability to expend is already statutorily curtailed during the initial signature-gathering phase in that it cannot employ or pay persons to circulate or witness a recall petition and it cannot expend monies campaigning against or for the defeat of an officer being recalled *until* an election is called. However, a municipal recall committee would be required to register if the committee anticipates or receives contributions *in anticipation of influencing* the outcome of a recall election if one were to be called later and the aggregate amount of those contributions exceeds \$500 during a calendar year. Once a recall election is called, a municipal recall committee would be required to register and report under chapter 106, Florida Statutes, if it had not already, if the committee anticipated making expenditures or actually expended, or anticipated receiving contributions or received contributions that exceed the aggregate amount of \$500 during a calendar year for the purpose of expressing advocating the passage or defeat of an issue on the ballot (i.e., the recall of the named elected municipal officer).

As of January 1, 2006, a municipal recall committee need not be registered as a political committee to inspect and obtain copies of official voter registration information to the extent that it is not confidential and/or exempt from public disclosure. The committee, just as any person or entity, can inspect and obtain copies of voter registration information located either in the local supervisor of elections' office or through the Department of State's Florida Voter Registration System which maintains the *official* voter registration list of the State and use the information for any purpose including petition signature-gathering for a municipal recall.

Sincerely,

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