



FYI

FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

January 21, 2016

Mr. Leonard Schmiege, Chairman
League of Voters, Extraordinaire
3024 25th Avenue North
St. Petersburg, Florida 33713

Re: DE 16-02 Voting – Offering Incentives
to Vote; Political Committees –
Expenditures; §§ 104.045, 104.061,
104.0616, 106.011, and 106.11, Florida
Statutes

Dear Mr. Schmiege:

You are the chairman of a Florida political committee and ask whether your political committee may legally pay electors to vote, among other related questions. The Division of Elections has the authority to issue you an advisory opinion pursuant to section 106.23(2), Florida Statutes.

FACTS

Your political committee proposes to increase voter turnout by offering cash, checks, or gift cards to persons in return for “completing the act of voting,” for “request[ing] to vote by mail,” or for convincing others to vote in person or by mail. You emphasize that the incentives your political committee proposes would only be to encourage others simply to vote, not to vote in a particular manner or for a particular candidate.

ANALYSIS

Florida law explicitly prohibits “vote-buying” and “vote-selling.” The prohibition against “vote-buying” is found in section 104.061(2), Florida Statutes, and reads as follows:

No person shall directly or indirectly give or promise anything of value to another intending thereby to buy that person’s or another’s vote or to

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corruptly influence that person or another in casting his or her vote. Any person who violates this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. However, this subsection shall not apply to the serving of food to be consumed at a political rally or meeting or to any item of nominal value which is used as a political advertisement, including a campaign message designed to be worn by a person.

§ 104.061(2), Fla. Stat.

The prohibition against “vote-selling” is found in section 104.045, which reads as follows:

Any person who:

- (1) Corruptly offers to vote for or against, or to refrain from voting for or against, any candidate in any election in return for pecuniary or other benefit; or
- (2) Accepts a pecuniary or other benefit in exchange for a promise to vote for or against, or to refrain from voting for or against, any candidate in any election,

is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

§ 104.045, Fla. Stat.

Together, these two provisions make it illegal to pay a person to vote in a particular manner (in other words, to “vote-buy”), or to agree to vote or refrain from voting for or against a particular candidate in exchange for a “pecuniary or other benefit” (in other words, to “vote-sell”). Both of these provisions contemplate that the incentive offered must be connected to a vote that is cast *in a particular manner* (or, as the case may be, a vote that is *not* cast in a particular manner).

To support your political committee’s proposed incentives for voting, you cite to advisory opinion DE 87-08. In questions two and three of DE 87-08, the Division was asked whether it was permissible for a person to give an elector a gift certificate, paraphernalia, or other consideration not redeemable in cash, prior to or subsequent to the casting of the vote. *See Div. of Elections Op. 87-08* (Aug. 3, 1987). In answering both questions in the affirmative, the Division considered sections 104.045 and 104.061, Florida Statutes.¹ The Division concluded that section 104.045 does not prohibit a person from giving an elector “a gift certificate or other consideration if the consideration is not intended to buy or corruptly influence another’s vote,” apparently because that

¹ At the time the 1987 opinion was rendered, section 104.045 provided that “vote-selling” was a misdemeanor. Current Florida law makes “vote-selling” a felony. *See § 104.045, Fla. Stat. (1987); § 104.045, Fla. Stat. (2015).*

section contemplates the situation where a person is attempting to actually “buy” a person’s vote—that is, where the person offers the elector something of value in exchange for the elector’s promise to vote for or against a particular candidate. DE 87-08 further interpreted section 104.045 to prohibit a person from offering something of value to an elector in exchange for the elector’s promise to vote in a particular manner. The Division also noted that the “vote-buying” provisions of section 104.061(2), Florida Statutes, would not prohibit a candidate’s giving an item of value to a voter as long as the candidate was not attempting to “buy [the] person’s vote.” *See Div. of Elections Op.* 87-08 (Aug. 3, 1987) (citing to *Div. of Elections Op.* 83-7 (Apr. 22, 1983)).²

Consistent with sections 104.045 and 104.061, and DE 87-08, the Division reiterates that it is illegal to buy votes or sell votes, regardless of whether the “buying” or “selling” is accomplished by cash, check, gift card, gift, or other item of value. Even the otherwise innocuous offering of an incentive simply to vote could run afoul of section 104.045 or section 104.061, or both, depending on the particular circumstances involved. That is, incentives could be offered to a voter in a way that would be designed to directly or indirectly cause the voter or a larger group of voters to vote in a particular manner.³ In such a case, the person giving the incentive could be guilty of violating section 104.061, Florida Statutes, which makes it illegal to “directly or indirectly give or promise anything of value to another intending thereby to buy that person’s or another’s vote or to corruptly influence that person or another in casting his or her vote.” § 104.061(2), Fla. Stat. Similarly, in such a situation the voter could run afoul of the prohibition against “vote-selling” in section 104.045. Put a different way, incentives to a voter to cast a vote may not legally be offered in a manner that attempts to circumvent the prohibitions against “vote-buying” and “vote-selling” contained in sections 104.061 and 104.045.

In light of these proscriptions against “vote-buying” and “vote-selling,” your political committee could not legally pay an elector to vote and have that expenditure be a valid one under chapter 106. A political committee may only make expenditures. *See* § 106.11(1)(a), Fla. Stat. (limiting political committee primary depository to use “only for the purpose of depositing contributions and making expenditures”). “Expenditures,” by statutory definition, must only be made “for the purpose of influencing the results of an election.” § 106.011(10)(a), Fla. Stat. For

² It should be noted that section 104.061(2), Florida Statutes, has undergone some revision since 1987.

³ A non-exhaustive list of examples where the person offering incentives to voters simply to vote could run afoul of sections 104.045 and 104.061 include the following: (1) incentives to vote might be offered to a group of people known to be registered under a particular party affiliation; (2) incentives to vote might be offered to voters who live in a particular location where a disproportionate number of voters support a particular candidate or party; or (3) incentives to vote might be offered to a group of people attending a particular political event or rally. In such situations, it would be possible that the intent of the person offering the incentives could run afoul of section 104.061(2), Florida Statutes, in a way that would constitute “vote-buying” or corruptly influencing voting. Similarly, the person offering to vote or voting in exchange for the incentive could violate the prohibition against “vote-selling” in section 104.045.

Leonard Schmiege

January 21, 2016

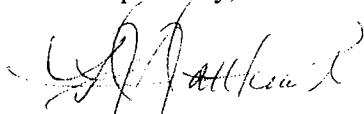
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a payment from your political committee to an elector to be a valid and permissible expenditure, it must be to influence the results of an election, i.e., to influence the elector to vote in a certain manner. But such a payment would be illegal under sections 104.045 and 104.061. Your political committee could not lawfully pay someone to vote without that expenditure being invalid under sections 106.11(1)(a) and 106.011(10)(a).

SUMMARY

Sections 104.045 and 104.061, Florida Statutes, explicitly prohibit “vote-buying” and “vote-selling.” It would be illegal to offer incentives for voting if the intent were to circumvent the prohibitions against “vote-buying” and “vote-selling” in sections 104.045 and 104.061. A political committee can only spend money to influence the results of an election. A political committee’s payment to an elector to vote could only be valid under chapter 106 if it were done to influence how that elector voted, which in turn would be illegal under sections 104.045 and 104.061. Therefore, a political committee could not lawfully make a valid expenditure to pay someone to vote.

Respectfully,



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