



Frequently Asked Questions SB 216 – Prohibition on Public Funds for Political Advertisements

Question: What is SB 216 (2009)?

Answer: SB 216 created a new statutory section, section 106.113 of the Florida Statutes, prohibiting local governments from expending "public funds" for political advertisements and electioneering communications on both local and state ballot issues.

106.113 Expenditures by local governments.—

(1) As used in this section, the term:

(a) "Local government" means:

1. A county, municipality, school district, or other political subdivision in this state; and

2. Any department, agency, board, bureau, district, commission, authority, or similar body of a county, municipality, school district, or other political subdivision of this state.

(b) "Public funds" means all moneys under the jurisdiction or control of the local government.

(2) A local government or a person acting on behalf of local government may not expend or authorize the expenditure of, and a person or group may not accept, public funds for a political advertisement or electioneering communication concerning an issue, referendum, or amendment, including any state question, that is subject to a vote of the electors. This subsection does not apply to an electioneering communication from a local government or a person acting on behalf of a local government which is limited to factual information.

(3) With the exception of the prohibitions specified in subsection (2), this section does not preclude an elected official of the local government from expressing an opinion on any issue at any time.

Question: What is a "political advertisement"?

Answer: In this context, it is a paid expression in any communications media, whether radio, television, newspaper, magazine, periodical, campaign literature, direct mail, or display or by means other than the spoken word in direct conversation, that expressly advocates the approval or rejection of an issue.¹ Newsletter distributed only to members of an organization, editorial endorsements by a newspaper, radio or TV station, or other recognized news medium, are not political advertisements.

Question: What is an "electioneering communication"?

Answer: In this context, it is a paid expression in any communications media by means other than the spoken word in direct conversation that contains a clear reference indicating that an issue is to be voted on at an election, without expressly advocating the passage or defeat of the issue.²

Question: What is the difference between a "political advertisement" and an "electioneering communication"?

Answer: A political advertisement contains express words, advocating a position on an issue, like "support," "oppose," "approve," "reject," "vote yes," "vote no." An electioneering communication does not use such express words to communicate a certain position on an issue.

Question: The federal district court for the Northern District of Florida declared the state's regulation of electioneering communications to be unconstitutional in May 2009, can a local government still violate the electioneering communication prohibition in § 106.113, Florida Statutes?

Answer: Technically unclear. Practically, not likely. The federal judge in *Broward Coalition of Condominiums v. Browning*, 2009 WL 1457972 (N.D. Fla. May 22, 2009), struck all then-existing references to "electioneering communications", including its definition from the Florida Statutes as being unconstitutional. Section 106.113, Florida

¹ See § 106.011(17), Fla. Stat.

² See § 106.011(18), Fla. Stat.

Statutes, however, did not yet exist and was, therefore, not included on the express list from which the references were to be stricken. So, while technically there is an argument that § 106.133, Florida Statutes still prohibits expending public funds on "electioneering communications"; practically, such a prohibition would be so flawed (for example, the statutory definition is now gone) as to be nearly impossible to define. In addition, purchased media communications that contained only factual information is expressly excluded from the original operation of § 106.133 in any event.

Question: What are "public funds"? Does that term include public "resources" of all types, including county staff time and energy?

Answer: "Public funds" is defined quite broadly in § 106.133, Florida Statutes, as being "all moneys" controlled by the county. But, it is modified in the statutory section by how those funds are used. What is prohibited is county money being spent for paid media communications that expressly tells the voter how to vote on a ballot issue. Accordingly, the use of staff time and resources to research a ballot issue that ultimately becomes the official position of the county commission in the form of an adopted resolution, for example, would not be a prohibited use of public funds.

Question: Can elected county commissioners express their opinions on ballot issues, whether in writing, verbally, or electronically?

Answer: So long as no county moneys are spent to purchase paid media communications in which the county commissioner tells the voters how to vote on a ballot issue, the commissioner can express his/her opinion in writing, by speaking, and by electronic transmission without violating the prohibition.

Question: Can a county commission appropriate moneys ("public funds") to a not for profit group, like a local economic development organization, as a general donation which then, in the course of its business, purchased media communications that expressly advocates a position on a ballot issue?

Answer: For the purpose of determining whether there a violation of § 106.133, Florida Statutes has occurred (and for no other purpose), it is unlikely this donation violates the new law so long as the donation was not made for the sole purpose of purchasing a political advertisement on a ballot issue and so long as the sole purpose of the organization is not to purchase political advertisements on ballot issues.

Question: Can a county commission appropriate moneys ("public funds") for either the county commission or a county staff person to join a membership organization which then, in the course of its business, purchases media communications that expressly advocates a position on a ballot issue?

Answer: For the purpose of determining whether a violation of § 106.133, Florida Statutes has occurred (and for no other purpose), it is unlikely such dues payments would violate the new law so long as the dues were not paid for the sole purpose of purchasing a political advertisement on a ballot issue and so long as the sole purpose of the organization is not to purchase political advertisements on ballot issues.

Question: If the county commission meeting, at which a resolution that takes an express position on a ballot issue and encourages the support or opposition of that issue is adopted, is televised by the county's public access channel, is there a violation of § 106.133, Florida Statutes? What if the local cable provider operates the public access channel? What if the county has to pay for coverage of its county commission meetings?

Answer: While television can be a form of paid media communications under the Florida Elections Code³, it is unlikely that the television coverage of an official county meeting at which an official county position is taken on a ballot issue, even if that position urges the voters to support or oppose the issue, would meet the definition of "political advertisement" as a paid expression so long as no county moneys are spent for the sole or specific purpose of such television coverage of the discussion.

Question: If a county commission adopts a resolution that takes an express position on a ballot issue and encourages the support or opposition of that issue and then posts the resolution on the county's official website, is there a violation of § 106.133, Florida Statutes?

Answer: While the internet can be a form of paid media communications under the Florida Elections Code⁴, it is unlikely that the posting of an official county document, on the county's official website, like a resolution would meet the definition of "political advertisement" as a paid expression.

³ See § 106.011(13), Fla. Stat.

⁴ See § 106.011(13), Fla. Stat.

Question: Can a county commissioner participate in a debate on a ballot issue and urge voters to vote for or against a ballot issue? Can a county commissioner participate in a presentation on a ballot issue at a local civics club and urge attendees to vote for or against a ballot issue?

Answer: Yes to both and the commissioner can bring handouts of his/her written opinion as well, so long as the handout is not a media communication that was paid for with "public funds".

Question: For purposes of understanding SB 216 only, can an appointed county official participate in a debate on a ballot issue and urge voters to vote for or a ballot issue? Can an appointed county official participate in a presentation on a ballot issue at a local civics club and urge attendees to vote for or against a ballot issue?

Answer: For purposes of any SB 216 issues only, yes to both and the official can bring handouts of his/her written, personal opinion as well, so long as the handout is not a media communication that was paid for with "public funds".