



Elections, Ethics, and Campaign Finance Web Conference

Preparing to Comply With Florida's New Campaign Finance and Ethics Laws



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Opening Remarks by Tom Feeney



Campaign Finance Reform a Priority during the 2013 Legislative Session.

- Florida's campaign finance reform package consists of 3 separate bills passed by the Legislature and signed into law by the Governor:
 - SB 2 (Ethics and Elections Committee)
 - SB 4 (Ethics and Elections Committee)
 - HB 569 (Rep. Schenck)



Overview of Presentation

- New Contribution Limits for Statewide and Other Candidates
- Elimination of Committees of Continuous Existence
- New Laws Applicable to Political Committee
- Increased Reporting Requirement for all Committees
- Limitations on dual “public” employment by legislators
- Increased powers of the Commission on Ethics



History of Florida’s Campaign Finance Laws

- **1951:** Legislation first enacted requiring each candidate to report all contributions made and expenditures received during the reporting period.
- **1973:** Florida enacted what is now Chapter 106 of the Florida Statutes and established the Florida Elections Commission.
- **1991:** Florida amended Chapter 106 and reduced the campaign contribution limit to \$500 per person per election.
The \$500 limit applies to any person, political committee or committee of continuous existence.



Florida Increases Campaign Contribution Limits

- Florida's \$500 contribution limit has not been changed since 1991.
- Effective Date of New Limits: November 1, 2013
- **Important:** Until November 1, 2013, current \$500.00 limits remain in place.



New Contribution Limits Statewide Races

Governor
Lt. Governor
Attorney General
Chief Financial Officer
Commissioner of Agriculture and Consumer Services, and
Justices of the Florida Supreme Court, seeking reconfirmation



New Contribution Limits Statewide Races

- \$3000 per person or entity per election
- Primary and General elections are considered two separate elections.*
- Governor and Lt. Governor are considered the same candidate for purposes of contribution limits.

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New Contribution Limits All Other Races

- Including candidates for
 - Legislative office
 - Multi-county office
 - County wide office
 - County court judge
 - Circuit court judge or
 - Any election conducted on a less than countywide basis

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All Other Races cont.....

- \$1000.00 per person or entity per election.
- Primary and General elections are considered two separate elections.*
- Candidates who decide to run for an alternative office:
 - contributions received for the original office are counted against the contribution limits for the new office.

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Contributions from Political Parties

- **Statewide candidates:** Contributions from a national, state or county executive committees of political party are *capped* at \$250,000 (in the aggregate).
- **Legislative and Other candidates:** May receive contributions up to \$50,000 from a county executive committee or a political party **AND** up to \$50,000 in the aggregate from a national or state executive committee of a political party, effectively increasing the allowable contribution from a political party to \$100,000.
- **Excluded from the Definition of a Contribution:** Polling services, research services, costs for campaign staff, professional consulting services, and telephone calls.



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Other Key Provisions

- Political parties are exempt from any contribution limit and may accept unlimited contributions.
- Unlike many states, Florida law does not contain a “management and control” provision. Therefore a corporation may contribute \$500 from every incorporated subsidiary, even if the subsidiary has the same management and controlling person as the parent corporation.
- Limitation on contributions of minors eliminated.
 - a) old limit was \$100 per person per election
 - b) Constitutionally suspect
 - c) Minors now treated as adults

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Florida Campaign Activity

- In 2012, there were
 - 692 Committees of Continuous Existence (CCE)
 - 239 Political Committees (PC)
 - 159 Electioneering Communications Organizations (ECO)
 - 14 political parties
- While not an exact number, it is estimated that **75%** of all campaign contributions were directed towards these types of committees versus a candidate’s campaign account.

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Florida Eliminates CCEs

Key Dates to Remember:

- **July 15, 2013:** The Division of Elections must notify every Florida CCE of the change in law.
- **August 1, 2013:** CCEs may no longer accept contributions.
- **September 30, 2013:** All CCE certifications are revoked.
- **September 30, 2013:** All CCEs must have a zero balance.
- **November 1, 2013:** All Florida CCE statutes are deleted.



Elimination of CCEs cont.....

- Notwithstanding that a CCE's certification is revoked as of September 1, 2013, all CCEs must file any outstanding report up and until November 1, 2013 including the report due in October, 2013 for the third quarter of 2013.
 - A PC or ECO that is established, maintained or controlled by an expiring CCE is responsible for any unpaid fine or penalty incurred by the CCE.
 - If no PC or ECO exists, the principal officers or the former CCE shall be jointly and severally liable for the fine or penalty.
- Every entity which currently has a "PAC" should confirm whether it is a CCE. Most corporate and organizational "PACs" in Florida are, in fact, CCEs.



Disbursement of CCE funds

- CCE funds must be disbursed in accordance with Florida law.
 - \$500 maximum to a candidate
 - No limit on contributions to ECOs, PCs or political parties.
- Most organizations wishing to continue activity in the political process will create PCs to replace their revoked CCE.
- A CCE, while still in existence, may contribute unlimited funds into a PC.

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Political Committee – Defined

- 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 calendar years:
 - 1) Accepts contributions for the purpose of making contributions to any candidate, PC, affiliated party committee of political party,
 - 2) Accepts contributions for the purpose of expressly advocating the election or defeat of a candidate or the passage or defeat of an issue,
 - 3) Makes expenditures that expressly advocate the election or defeat of a candidate or the passage or defeat of an issue, and
 - 4) Makes contributions to a common fund, other than a joint checking account between spouses, from which contributions are made to any candidate, PC, affiliated party committee or political party.

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Contribution Limits TO a Political Committee --Current Law--

- \$500 per election to a PC supporting/opposing one or more candidates.
- \$500 per election to a PC supporting/opposing both candidates and issues.
- No contribution limit to a PC from a political party.
- No contribution limit to a PC supporting or opposing issues only.



Contributions Limits TO a Political Committee New Law

- **Effective November 1, 2013**
 - PCs may accept unlimited contributions from any source
- **Effective May, 1, 2013**
 - PCs may accept unlimited contributions from a CCE.
 - Purpose of earlier date is to aid in the dissolution transition of CCEs.
- ***But Remember....***
 - Effective September 1, 2013, contributions cannot be made to a CCE.
- ***Unknown if a Glitch or Purposeful, but***
 - New law creates a 60 day period when CCEs are shut down but PCs cannot accept more than a \$500.00 contribution.



Limitations on Contributions BY a Political Committee

Statewide Office/Supreme Court Justice

- \$3000 per election

Legislative/multicounty/countywide/other judicial

- \$1000 per election

In support of, or in opposition, to issues

- No Limit

To another political party or ECO

- No Limit

- **“3 Pack” Revision: Effective November 1, 2013:**
 - PCs created for the purpose of jointly endorsing 3 or more candidates must adhere to the new contribution limits.
 - Such contributions are now reportable.



Permissible and Prohibited Activities of Political Committees

- PCs may contribute to candidates, other PCs, ECOs, affiliated party activities, and political parties.
- Will become the committee of choice for most corporations and organizations



Prohibition of Gifts from Political Committees to Reportable Persons

- A PC is prohibited from giving, directly or indirectly, any gift to a reporting person or procurement employee or a member of his or her immediate family.
- A reporting person or procurement employee or a member of his or her immediate family is prohibited from soliciting or knowingly accepting, directly or indirectly, any gift from a political committee.
 - The value of the gift is irrelevant. The solicitation, and acceptance gifts from a political committee is prohibited, regardless of the value of the gift.



What is a Gift? What are the Penalties?

- For purpose of this section, **gift** is broadly defined as
 - any purchase, payment distribution, loan, advance, transfer of funds, or disbursement of money or anything of value that is not primarily related to contributions, expenditures or other political activities.
- **Penalty for Violating this Prohibition**
 - Subject to a civil penalty equal to three times the amount of the gift.
 - Penalty can be assessed against the giver and the receiver of the gift.



Limitations that Exist for CCES but not PCs

- CCEs are barred from funding any electioneering communication supporting or opposing a candidate or issue absent registering as a PC.
- CCEs cannot make independent expenditures (non-candidate coordinated expenditures)
- CCES must operate in accordance with a written charter or a set of bylaws.
- At least 25% of the income of the CCE must be derived from dues or assessments payable on a regular basis by its membership.
- PC has no such limitation.
- PCs are free to make independent expenditures.
- PCs require no bylaws.
- No dues requirement at all.



Campaign Finance Report

- Effective November 1, 2013, candidates, PCs, and ECOs must file more than three times the number of campaign finance reports to the Division of Elections.



Reporting Requirements for All Candidates, PCs, CCEs, and ECOs. --Current Law--

- PCs, CCEs, and ECOs, must file a *quarterly* report with the Division disclosing all contributions and expenditures made during the calendar quarter.



Reporting Requirements for Statewide Candidates, PCs, and ECOS. --New Law --

- **Effective Date:** November 1, 2013
- **Monthly Reports** are required to be filed with the Division disclosing all contributions and expenditures made during the calendar quarter.
- **Weekly Reports:** commencing the 60th day immediately preceding the primary and each week thereafter until the 4th day immediately preceding the general election.
- **Daily Report:** commencing the 10th day immediately preceding the general election and each day thereafter, with the last daily report being filed the 5th day immediately preceding the general election.



Incomplete Reports

- Incomplete reports must be accepted by the Division on a “conditional basis.”
- Committee treasurer will be notified and upon notice, will have 7 days to file an addendum to the report providing all necessary information.
- Failure to provide a complete report after notice will constitute a violation.



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Waiver of Reporting Requirement

- A candidate or PC that has **not**
 - received funds,
 - made any contributions or
 - expended any reportable funds

is not required to file a report that month; however, the subsequent report must specify that the report covers the entire period between the last submitted report and the current report.

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Penalties for Violation of Campaign Report Requirements

- \$50 per day for the first 3 days
- \$500 per day for each late day – not to exceed the total receipts or expenditures for that month, whichever is greater.
- All fines incurred by a candidate must be paid from personal funds of the candidate.
- Payment of a fine is not an allowable campaign expenditure.
-



Responsibility for the Report

- Candidate/candidate's treasurer or a PC's chair/treasurer must certify to the correctness of each report.
- Any person who willfully certifies the correctness of any report while knowing that such report is incorrect, false or incomplete commits a misdemeanor.



Dual Public Employment by Public Officers

- Definition of a Public Officer

Any person elected to state or local office, or for the period of his or her candidacy, any person who has qualified as a candidate for state or local officer.



Dual Public Employment

A public officer is prohibited from accepting public employment with the state if the public officer knows or should have known that the offer of employment is being offered for the purpose of gaining influence or other advantage based on the public officer's office or candidacy.



Dual Public Employment

- A public officer may accept public employment only if
 - The position was already in existence or was created without the knowledge or anticipation of the public officer's interest in the position
 - The position was publicly advertised
 - The public officer was subject to the same application and hiring process as other candidates, and
 - The public officer meets or exceeds the required qualifications for the position



Dual Public Employment

- If already employed by the public entity prior to becoming a public officer, he or she may continue employment **but**
 - may not accept an promotion, advancement increased compensation or anything of value if he or she knows or should have known that it was given as a result of his or her election or if it is otherwise inconsistent with what is given to similarly situated employees.



Powers of Commission on Ethics Expanded

- The Commission may now investigate ethics complaints received from the:
 - Governor's office
 - US Attorney
 - Florida Department of Law Enforcement
 - Florida State Attorney
 - Sworn written complaint by any person.
- The Commission does not have the authority to initiate investigations absent a referral or complaint from one of the above listed entities.

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Expansion of Commission Powers.....

- Commission now has the power to investigate any lobbyist who has
 - Failed to register
 - Failed to submit a compensation report
 - Made a prohibited expenditure
 - Knowingly submitted false information in any report.
- Commission shall investigate any lobbying firm, lobbyist, *principal*, agency, officer or employee upon a receipts of a sworn complaint or random audit of a lobbying report.

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Potential Penalties for Violations

- If Governor and Cabinet find that a violation occurred, the following penalties are available:
 - Prohibition from lobbying for 2 years
 - Reprimand of the violator
 - Censure of violator
 - A fine of not more than \$5000.00 can be levied against the lobbyist, the lobbying firm, and the principal.



Gifts and Honoraria

- Expands the current gift ban to prohibit state vendors doing business with the reporting individual's agency from giving any gifts to covered individuals.
- Clarifies that a "procurement employee" is a reportable person only if he or she exceeds or is expected to exceed \$10,000 in purchasing during a year.





Voting Conflicts

- Public officers is prohibited from voting on any matter that would inure to his or her “special private gain or loss.”
- A public officer who creates a *true* blind trust can avoid having a prohibited conflict of interest.
 - Notice of the trust or a copy of the trust must be filed with the Commission.
- Includes members of Enterprise Florida as public officers governed by conflict of interest rules.



Key Important Takeaways

- Contribution limits are going up, but NOT UNTIL November 1, 2013.
- CCEs are going away and funds must have a zero balance by September 30, 2013.
- Starting November 1, 2013, all PCs (and ECOs) are required to file monthly reports – not quarterly reports
- PCs cannot pay for recreational or other expenses of a reporting person absent the expense being “primarily related” to a campaign purpose.
- The Commission now has investigative authority over PCs, ECOs, lobbyists, and principals.
- Penalties for violations of Florida’s campaign finance laws have been increased.



Questions?