

March 24, 2008

Jonathan Zucker, Esq.  
Chief Operating Officer and Counsel  
ActBlue  
P.O. Box 382110  
Cambridge, Massachusetts 02238-2210

RE: DE 08-03  
Campaign Financing – Contributions  
through a conduit  
§§ 106.011(1), 106.021(1), 106.03,  
106.07(4), and 106.08(1) and (5), Florida  
Statutes

Dear Mr. Zucker:

This letter responds to your request for an advisory opinion regarding actions proposed to be taken by ActBlue, a Massachusetts limited liability corporation, which seeks to serve as a conduit for contributions by individual donors to candidates and political committees in Florida. Based upon a hypothetical fact pattern, you ask a series of questions seeking guidance regarding ActBlue's compliance with chapter 106, Florida Statutes (2007).

Because ActBlue, an organization engaged in political activity has questions about compliance with Florida's election laws with respect to its proposed actions, the Division of Elections has the authority to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2007).

Your hypothetical fact pattern indicates that ActBlue will operate a website that includes a candidate directory listing candidates for state offices (*i.e.*, Governor, Attorney General, Chief Financial Officer, State Senator, and State Representative)<sup>1</sup> and a committee directory listing political committees registered with Florida's Division of Elections. Visitors to the website may make contributions by credit card to one or more of the listed candidates or committees. Each donor's contribution to an intended recipient will be limited by the applicable contribution limits in Florida. ActBlue will then aggregate the contributions into a bank account and periodically transmit them, normally by check, to the intended recipients. Before transmitting the contributions, ActBlue will deduct from the gross contributions a processing fee (currently, 3.95% for each contribution). ActBlue will attach to each transmission sent to the intended recipient a notice that the contribution represents a contribution from the individual donor and not from ActBlue, a detailed explanation of the processing fees and to whom they were paid,

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<sup>1</sup> Your list also includes the Secretary of State; however, in Florida, the Secretary of State is an appointed office.

instructions on how to access a data file containing all data required under Florida law for the candidate or political committee to properly report the contribution (such as name, address, employer, occupation, contribution amount, and date of contribution), and contact information for ActBlue in case the candidate or political committee has questions. The hypothetical facts also indicate that ActBlue will exercise no direction or control over any contribution. The individual donors choose which candidate or political committee is to receive the contribution; ActBlue simply acts as a conduit for the funds.

Your initial question is whether ActBlue must register as a political committee. The answer is “yes” if ActBlue anticipates collecting contributions during a calendar year in an aggregate amount exceeding \$500. Section 106.011(1)(a), Florida Statutes (2007), includes within its definition of “political committee:”

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; .... [*Emphasis supplied.*]

We assume that ActBlue will receive more than \$500 in a calendar year in your hypothetical situation. Because it would be accepting contributions for the purpose of making contributions to candidates and political committees in Florida, it would have to register as a political committee under section 106.03, Florida Statutes (2007).

Your next question is whether a contribution made on ActBlue’s website and earmarked by the donor for an intended recipient over which ActBlue exercises no direction or control counts against the donor’s contribution limits to ActBlue. The answer is “yes.” Because ActBlue would necessarily have to register as a political committee and it would be in support of or opposition to candidates, contributions to ActBlue are limited. Section 106.08(1)(a), Florida Statutes (2007), states:

Except for political parties, no person, political committee, or committee of continuous existence may, in any election, make contributions in excess of \$500 to any candidate for election to or retention in office or to any political committee supporting or opposing one or more candidates. Candidates for the offices of Governor and Lieutenant Governor on the same ticket are considered a single candidate for the purpose of this section.

Although the hypothetical situation indicates the contributions to ActBlue will be earmarked for specific candidates and political committees by the donors, Florida law prohibits a person contributing in the name of another. Section 106.08(5)(a), Florida Statutes (2007), states:

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A person<sup>2</sup> may not make any contribution through or in the name of another, directly or indirectly, in any election.

Because ActBlue intends to deposit the donors' contributions in ActBlue's bank account and periodically write checks to the intended candidates and political committees reflecting the donated amounts, ActBlue would be making a contribution in the name of another. Once deposited in ActBlue's account, the funds would lose their identity as a contribution to the candidates or other political committees on behalf of the individual donor and the funds, instead, become contributions to ActBlue. Any subsequent contribution from ActBlue to a candidate or political committee then is a contribution from ActBlue.

You also ask if the contribution to ActBlue's website that is earmarked for an intended recipient count against ActBlue's contribution limits to the intended recipient. Again, the answer is "yes." Based upon the application of section 106.08(1)(a), Florida Statutes (2007), ActBlue would be prohibited from making "contributions in excess of \$500 to any candidate or political committee supporting or opposing one or more candidates" in each election.

Your final question regarding contributions is whether the contributions to ActBlue's website that are earmarked to an intended recipient count against the donor's contribution limits to the intended recipients. The answer is "no." Because ActBlue would be prohibited from making contributions in the name of another, the donors' credit card donations on ActBlue's website would be considered a contribution to ActBlue, not to the intended recipients.

You next ask a series of questions regarding what information from the donor and ActBlue must ActBlue report to the intended recipients. Based upon the answers to the questions above, ActBlue should not report any information to the intended recipients about the donors that use the services of ActBlue's website. The contributions under Florida law are deemed to be from ActBlue, not from the donors to ActBlue; therefore, the information that ActBlue would be required to report to the intended recipients would be information about ActBlue's contribution to them. Section 106.07(4), Florida Statutes (2007), would require ActBlue to provide its name, address, along with the amount and date of the contribution to the intended recipients so that the intended recipients could fulfill their reporting requirements regarding the contributions from ActBlue.

Your final question involves whether the funds received by ActBlue for intended recipients in Florida must be maintained at a Florida bank. As indicated above, ActBlue would have to register as a political committee. By statute, it would be required to establish a campaign depository for its contributions and expenditures. Section 106.021(1)(b), Florida Statutes (2007), provides the answer regarding the type of bank which can serve as the depository:

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<sup>2</sup> "Person" means an individual or a corporation, association, firm, partnership, joint venture, joint stock company, club, organization, estate, trust, business trust, syndicate, or other combination of individuals having collective capacity. The term includes a political party, political committee, or committee of continuous existence. § 106.011(8), Fla. Stat.

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Any bank, savings and loan association, or credit union authorized to transact business in this state may be designated as a campaign depository.

Based upon the above responses, it is unnecessary for the Division to address ActBlue's other questions in its request for an advisory opinion.

#### SUMMARY

If an organization accepts credit card donations on the organization's website for candidates or political committees in Florida, deposits the donations into the organization's bank account, periodically aggregates the donations, and then provides them to specific candidates or political committees, it must register as a political committee in Florida. The organization (political committee) may not make the contribution to candidates and other political committees in the name of the donor who made the credit card donation to the organization. The resulting contributions to the intended recipients are from the organization (political committee) and statutory contribution limits apply to them.

Sincerely,

Donald L. Palmer

Director, Division of Elections

Prepared by:

Gary J. Holland

Assistant General Counsel