

RESCINDED

DE 94-15 - September 2, 1994

Support and Endorsement of Candidates Sections 106.0LL(1), (3), (5), and (17); 106.055; 106.07; 106.08; and 106.144, F.S.

TO: Mr. J. Jeffry Wahlen, Attorney at Law, MacFarlane, Ausley, Ferguson & McMullen, Post Office Box 391, Tallahassee, Florida 32301

Prepared by: Division of Elections

This is in response to your request for an advisory opinion regarding support and endorsement of candidates. You represent the Tax Cap Committee (Committee) which is a committee formed to support several proposed constitutional amendments (issues). These amendments are currently under review by the Supreme Court of Florida. Therefore, the Division of Elections, pursuant to Section 106.23(2), Florida Statutes, has authority to issue this opinion to you.

The Committee wishes to do a mailing in support of the ballot issues it is advocating. You have provided a copy of the proposed mailing and it is in the form of a letter from the committee. Various parts of this letter state, among other things, that:

1. "Many candidates for Governor and other public offices have given support to all or a part of the plan."
2. Voters should "talk to candidates". Let them know how you feel and ask them to embrace the "Taxpayer Protection Plan"; and,
3. Solicits contributions for the committee from the recipient of the letter.

In addition, according to your opinion request, the letter will urge its recipients to discuss the four amendments being advocated by the committee with friends and neighbors and to "review the list of candidates who have endorsed the amendments." If the recipient "knows of a candidate not on the list of supporters," they are urged to "contact the candidate to find out why the candidate is not on the list." Part of this letter is a list entitled "Candidate Support to Date" beneath which appears a list of legislative and cabinet level candidates who "support" the committee's position. Support is indicated by the letter E which means the candidate has "formally endorsed the amendment," or the letter A which means that "whatever his/her personal position, the candidate has signed an amicus brief asking the Supreme Court to let Florida citizens vote on the amendment." An EA means the candidate has done both. Following the codes are "quotes" from the candidates expressing their support.

The Division has not and cannot undertake an investigation of the accuracy of these quotes or the accompanying survey. However, assuming the truth of the representations and the context of the letter, the unmistakable impression is that the committee is supporting the candidates that support the committee and that the named candidates are supporting the issues that the committee is advocating.

If there are candidates who have not or do not support the committee's position, the recipient is urged to contact such candidates to obtain their support lest they be considered a part of the "big government crowd ... trying to throw the plan off the ballot." In addition, the letter pits one candidate against another. For example, in the survey one candidate has both endorsed the amendments and signed the amicus brief. On the other hand, another candidate has signed the amicus brief but not endorsed the amendment.

Against this background and the facts as you have represented them, you ask the following questions:

- (1) Whether sending the letter constitutes the "support" of a candidate as that term is used in Section 106.011(1), Florida Statutes.
- (2) Whether the letter constitutes an "independent expenditure" that advocates the election of a candidate within the meaning of Section 106.011(5), Florida Statutes.
- (3) Whether the letter constitutes a political advertisement "supporting any candidate" within the meaning of Section 106.011(17), Florida Statutes.
- (4) Whether the letter would be considered an "in kind contribution" in support of a candidate within the meaning of Sections 106.011(3) and 106.055, Florida Statutes.
- (5) Whether the letter could be considered an endorsement giving rise to the reporting obligation outlined in Section 106.144, Florida Statutes.

With regard to your first question, Section 106.011(1), Florida Statutes, requires persons to register as a political committee if such persons have a "primary or incidental purpose" of supporting or opposing candidates or issues. While the words primary, incidental, support, and oppose are not further defined, they are unambiguous words of common usage. When words of common usage are used in a statute, we look to the ordinary dictionary meaning of the words in the law. State v. Stewart, 374 So. 2d 1381 (Fla. 1979). Similarly, the legislature is presumed to know the meaning of the words it uses in a statute and that it has expressed its intent by using those words. Thayer v. State, 335 So. 2d 815 (Fla. 1976).

The word support means, among other things, to aid the interests of another. American Heritage College Dictionary 3d edition, 1993. The word support is synonymous with other verbs used to show the giving of aid or encouragement to a person or cause. Id. Therefore, in answer to your first question, the letter described above appears to constitute support for the candidates listed therein and would thus require you to register as a committee supporting both candidates and issues. In so doing, you would be subject to the contribution limits prescribed in Section 106.08, Florida Statutes.

As to question two, independent expenditure is defined at Section 106.011(5), Florida Statutes, to mean one that is not based upon any consultation with, control by, or coordination with any candidate. Therefore, having previously concluded that the letter constitutes support for candidates, such an expenditure associated with the letter would be an independent one if it falls within the above

definition. If such is not the case, and if consultation, control, or coordination was present, the expenditure would be an in-kind contribution subject to the limits prescribed by Section 106.08, Florida Statutes.

Regarding questions three and four, political advertisement is defined at Section 106.011(17), Florida Statutes, to mean, among other things "direct mail which supports a candidate ... or issue." In view of the discussion in one, above, the answer to question three is yes. As to question four, see the response to question two.

With regard to your last question, we believe that your letter is an endorsement of these candidates. We believe also that persons registered as a political committee necessarily have to file a statement of endorsement under Section 106.144, Florida Statutes. See, Op. Div. Elect. Fla. 94-12 (July 12, 1994).

SUMMARY

Under the specific facts of your opinion request, where a political committee is formed to support issues and sends a mass mailing advocating such issues, which also includes information that certain candidates support such issues, such letter constitutes support of the named candidates. If the expense of the letter is paid without any control by, consultation with, or coordination with the candidate, it is an independent expenditure. Otherwise, it is an in-kind contribution. Such letter is also a political advertisement, and the committee must file a statement of endorsement.