

DE 99-06 - November 2, 1999

Telephone Solicitation
§§106.147(1)(a), (b), Fla. Stat.

TO: Mr. Al Cardenas, Chairman, Republican Party of Florida, 719 North Calhoun Street, Tallahassee, Florida 32303

Prepared by: Division of Elections

This is in response to your request for an advisory opinion, dated September 31, 1999. You wrote as Chairman of the Republican Party of Florida, and pursuant to section 106.23, Florida Statutes, the Division of Elections has authority to issue this advisory opinion to you. In essence, you have asked two questions:

1. Pursuant to section 106.147(1)(a), Florida Statutes, regarding a series of like political phone calls, is a disclaimer necessary if the number of calls is less than 1000 and the average duration of the calls is greater than two minutes?
2. Are there any circumstances that would subject such calls to the disclaimer provisions of section 106.147(1)(a), Florida Statutes, if the standards set forth in section 106.147(1)(b), Florida Statutes, are met?

Section 106.147(1)(b), Florida Statutes, reads:

Any telephone call conducted for the purpose of polling respondents concerning a candidate or elected public official which is a part of a series of *like* telephone calls that consists of *fewer than 1,000 completed calls and averages more than 2 minutes in duration* is presumed to be a political poll and not subject to the provisions of paragraph (a).

(Emphasis supplied).

Section 106.147(1)(a), Florida Statutes, requires political calls that *do not* fall within the parameters of section 106.147(1)(b) to include a disclaimer identifying the sponsor of the call. Section 106.147(1)(a) reads in part:

(1)(a) Any telephone call supporting or opposing a candidate, elected public official, or ballot proposal must identify the persons or organizations sponsoring the call by stating either: "paid for by " (insert name of persons or organizations sponsoring the call) or "paid for on behalf of " (insert name of persons or organizations authorizing call). . .

Thus, the answer to Question No. 1 is no. A disclaimer is not required if the number of "like" calls completed is less than 1000 and the average length of those calls is more than two minutes.

Your second question asks if there are any circumstances that would trigger the disclaimer requirement of section 106.147(1)(a), if the requirements of paragraph (1)(b) were met? Assuming the requirements are met, I cannot articulate specific circumstances that would trigger such a requirement. Regarding the exemption from the disclaimer requirement in section 106.147(1)(b), the staff analysis for CS/SB 568 (creating section 106.147) prepared by the Senate Committee on Ethics and Elections (1997), provided:

This exemption for certain polls seeks to subject push polls to the disclaimer requirements while exempting scientific, public-opinion surveys. Push polls are a form of negative campaigning masquerading under the guise of legitimate public-opinion research, designed to persuade or dissuade opinion as opposed to gather and collect objective information. (*citing*, Florida House of Representatives, Committee on Election Reform, *Push Polling: The Art of Political Persuasion* 1, 17-18 (January 1997)). . . Although this provision should be effective in reaching some push polls, political telemarketers could still "piggyback" push polls and push poll questions on otherwise legitimate scientific polls, such as tracking surveys, thereby circumventing the disclaimer requirement.

Based upon the language in paragraph (1)(b), it appears that the legislature has created a rebuttable presumption that certain calls are legitimate, public-opinion polls. In order to rebut the presumption, one must engage in a fact-based inquiry of the circumstances surrounding the calls in question. There are three elements that must be examined:

1. whether the contact was made in a series of "like" telephone calls;
2. whether there were less than 1000 of the calls; and
3. whether the calls must average more than two minutes in length.

It is generally understood that the polls exempted in section 106.147(1)(b) shall be conducted in a similar manner in order to be considered "like" telephone calls. *Webster's New Riverside Dictionary* (1994) defines "like" as "having the same or almost the same characteristics; similar." Thus, a fact-finder might examine whether all of the calls were similar in nature, i.e., they posed similar questions or followed a similar script.

In addition, a significant variance in the duration of the calls might lead a fact-finder to conclude that some of the calls were made only to reach the required two minute average length. It would certainly be relevant, if for example, an organization made 100 calls that each lasted for 1.5 minutes, and five calls that each lasted for 1 hour. Finally, a fact-finder might also explore whether the calls appear to take on the characteristics of a push poll, as described above.