

DE 77-10 - March 22, 1977

**Independent Expenditures
Chapter 106, F.S.**

To: Talbot D'Alemberte, Esquire, Steel, Hector and Davis, Southeast First National Bank, Miami, Florida 33131

Prepared by: Division of Elections

By letter of March 16, 1977, you have asked on behalf of your client (an investor-owned electric utility with a current interest in a municipal franchise):

Whether the Florida Election laws apply to expenditures to express a corporation's views on issues involving a municipal franchise prior to the scheduling of any election on such issues.

Specifically, you are concerned to know whether the reporting requirement, Section 106.07, Florida Statutes, or registration requirements, Section 106.03, Florida Statutes, or Rule 1C-10.01, F.A.C., or expenditure limitations provisions, Section 106.10, Florida Statutes, have application to such electric utility or franchisee seeking franchise renewal — where no election respecting such franchise has been scheduled. It is my further understanding, in this regard, that an election on said issue may not be required.

Expenditures, as defined by Section 106.011(4) are, in short, any thing of value spent or given "for the purpose of influencing the results of an election."

In this respect, the Attorney General of Florida has ruled that Section 106.10, Florida Statutes, is a dead letter in the wake of the United States Supreme Court's Buckley v. Valeo decision invalidating limitations upon free speech in the form of "expenditures," at 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976). A.G.O. 076-145. Accordingly, Rule 1C-10.01, F.A.C., was promulgated to require the registration of persons or committees expending \$500 or more to, inter alia, "advocate.... the acceptance or rejection of an issue "

Although the rule is on its face broad, as authorized by A.G.O. 076-145, its statutory matrix is, and by law must be, Section 106.011(4) — defining such expenditures (to advocate or reject an issue) exclusively in terms of a purpose to influence the results of an election.

If Chapter 106, and particularly Section 106.011(4) and its derivative rule, were read in a broad and comprehensive context to effectuate the stated purposes of the Campaign Finance Act of 1973 ("Who Gave it, Who Got It" law), it might be held that expenditures made by a franchisee in anticipation of election are intended early on to influence the results of same and are covered expenditures — i.e., must, if the \$500 threshold is met, report under Rule 1C-10.01.

However, Chapter 106 is essentially a criminal statute; i.e., it provides criminal sanctions for making expenditures in a manner "other than that provided by this chapter" — viz. Section 106.07, Florida Statutes, and Rule 1C-10.01 thereunder. Criminal statutes must, of course, be strictly construed.

Strictly construed, therefore, expenditures made by your client, as a real party in interest, before and possibly in lieu of an election not yet scheduled, would appear not to be covered or regulated expenditures as defined by Section 106.011(4), Florida Statutes.

It would be well in this regard to take account of Section 106.011(2), Florida Statutes, which defines a "political committee" as a combination of individuals "or a person other than an individual" whose primary or incidental purpose is, inter alia, to support or oppose any issue, and who accepts contributions or makes expenditures during a calendar year in an aggregate amount in excess of \$500. Because the "expenditures" referred to by Section 106.011(2) are those very expenditures in respect of which we have held that your client is not, at this time, regulated. Your client would not be required to register as a political committee, Section 106.03, Florida Statutes, or report as such, Section 106.07, Florida Statutes, at this time.

Nevertheless, the spirit of Chapter 106, Florida Statutes, constraining full disclosure to the public of "who gave it, who got it" has long guided the Division of Elections in advising candidates, political committees and other persons or groups expending funds in the public arena, that they cannot err by making full disclosure.