

**DE 78-34 - August 15, 1978**

**Judicial Candidates; Attendance At Political Party Functions.**

**Art. V, s. 12, Fla. Const.; Ss. 105.011, 105.071, 105.09, F.S.; Canon 7, Code Of Judicial Conduct**

*To: Mr. Ray Arden, Chairman, Pinellas County Republican Executive Committee, 8950 Seminole Boulevard, Seminole, Florida 33542*

*Prepared by: Division of Elections*

By your letter of August 2, 1978, an advisory opinion of this office was requested in answer to the following question:

"Is it permissible for a candidate for judicial office to attend Executive Committee meetings, club meetings, and other functions of each party without actually participating in the matters discussed at the meeting?"

Subject to certain qualifications and considerations outlined below, your question is answered in the affirmative.

Candidates for judicial office created by Article V of the state constitution may campaign for election in the case of county and circuit courts, or for retention in the case of district courts of appeal or the supreme court. To regulate these types of elections the legislature has seen fit to enact one chapter of the election code exclusively for judicial candidates.

In this chapter Florida has provided for the nonpartisan election of judges. The law states:

"A judicial office is a nonpartisan office, and a candidate for election or retention thereto is prohibited from campaigning or qualifying for such an office based on party affiliation." s. 105.011(1), F.S.

To insure that such campaigns for election or retention are conducted on a nonpartisan basis, the election law imposes certain restrictions on the activities of a judicial candidate to insulate him/her from political parties. These limitations are as follows:

"A candidate for judicial office shall not:

1. Participate in any partisan political party activities, except that such candidate may register to vote as a member of any political party and may vote in any party primary for candidates for nomination of the party in which he is registered to vote.
2. Campaign as a member of any political party.
3. Publicly represent or advertise himself as a member of any political party.
4. Endorse any candidate.

5. Make political speeches other than in his own behalf.
6. Make contributions to political party funds.
7. Accept contributions from any political party.
8. Solicit contributions from any political party.
9. Accept or retain a place on any political party committee.
10. Make any contribution to any person, group, or organization for its endorsement to judicial office.
11. Agree to pay all or any part of any advertisement sponsored by any person, group, or organization wherein the candidate may be endorsed for judicial office by any such person, group, or organization." s. 105.071, F.S.

The violation of this section constitutes a first degree misdemeanor.

In addition, the law addresses partisan organizations. Political parties and partisan political groups, i. e., those associated with a particular political party or candidate, are prohibited from endorsing, supporting, or assisting any judicial candidate, s. 105.09, F.S.

The legislation outlined above closely follows the political activity provisions of the Code of Judicial Conduct as adopted by the Supreme Court of Florida. In re The Florida Bar — Code of Judicial Conduct, 281 So.2d 21 (1973). Canon 7 of this code, which became effective on September 30, 1973, specifies that activity which may or may not be engaged in by a judicial candidate.

Those portions thereof pertinent to the discussion here state:

"A judge or a candidate for election to judicial office should not:

- a. act as a leader or hold any office in a political organization;
- b. make speeches for a political organization or candidate or publicly endorse a candidate for a public office;
- c. solicit funds for or pay an assessment or make a contribution to a political organization or candidate, or purchase tickets for political party dinners, or other functions, except as authorized in subsection A(2)." Code of Judicial Conduct, Canon 7, subsection A(1).

The exception provided in the Code permits a judicial candidate to "attend political gatherings, speak to such gatherings on his own behalf when he is a candidate for election or re-election." Code, supra, subsection A(2).

The Attorney General has previously construed a similar provision in the now replaced Standards of Judicial Conduct. Op. Att'y Gen. Fla 072-232 (July 25, 1972). It was there observed that:

". . .a candidate for election or reelection to a judicial post is entitled to campaign in his own behalf; and this necessarily requires his seeking the votes of members of political parties." Id.

Construing s. 105.071, F.S. and the then existing standards of conduct, the Attorney General

concluded that these "require a candidate for judicial office to abstain from any activity that has any relationship whatsoever to a political party; however, he may campaign in his own behalf and may speak at meetings of party executive committees, rallies, and other political gatherings." Id.

Upon review of the current statutory language and the provisions of the Code of Judicial Conduct, there appears no reason to arrive at a conclusion contrary to that of the Attorney General. Accordingly, a judicial candidate may attend and speak at meetings of political parties, or any partisan organization.

However, in light of the restrictions of ch. 105, F.S., care should be taken to insure that any appearance by a judicial candidate is available to all other such candidates and that the organization is not collectively supporting any particular judicial candidates. It is also advisable that any appearances before partisan groups by judicial candidates be separate from those by partisan candidates.

Violations of ss. 105.071 and 105.09, F.S., constitute criminal violations which are enforced through the office of the appropriate state attorney. Conduct by judicial candidates in contravention of the Code adopted by the Supreme Court is the concern of the Judicial Qualifications Commission. In re The Florida Bar, supra. 281 So.2d at 23. See Art. V., s. 12(A), Fla. Const.

### **SUMMARY**

A candidate for judicial office may attend and may speak in his own behalf at political party meetings and other functions. However, care must be exercised to insure compliance with ch. 105, F.S., and the Code of Judicial Conduct.