

DE 78-36 - August 17, 1978

**Political Advertising; Items Of Value; Contributions.
ss. 104.061, 106.011, 106.07, and 106.142, F.S.**

To: Honorable George Firestone, Suite 237, 216 South Duval Street, Tallahassee, Florida 32304

Prepared by: Division of Elections

This is in response to your recent letter in which you requested an advisory opinion of this office. Your question is essentially:

Is it permissible under the Florida Election Laws to offer a "Firestone Blimp" to contributors?
As discussed below, your question is answered in the affirmative.

As a means of campaign advertising and identification, your campaign for Secretary of State has made extensive use of miniature "blimps" embossed with the appropriate candidate campaign designation. Your letter states that it is your desire to make these blimps available to contributors. It is your stated intention to utilize them only for public relations and fund raising and at no time to utilize the blimps for the purpose of giving a gift to influence votes.

The blimps are designed to promote your candidacy by means of a particular type of display, and therefore, constitute political advertising as defined in s. 106.142, F.S. Being such, the blimps constitute a legitimate campaign expenditure in that they are obviously intended to "influence the results of an election." s. 106.011(4), F.S. This expenditure will be reflected in your campaign treasurer's report, s. 106.07(4)(g), F.S.

The election code obviously contemplates that certain items will be sold and as a fund raising device. The treasurer's report must include the total proceeds from:

"2. Sales of such items as political campaign pins, buttons, badges, flags, emblems, hats, banners, literature, and similar materials." s. 106.07(4)(d), F.S.

Thus, if it was your intent to actually sell your blimps (which appear to be within the meaning of the quoted statute), your treasurer's report would need to reflect the total proceeds. Each person purchasing a blimp would be reported as an individual contributor to the extent of the amount paid. s. 106.07(4)(a), F.S.

However, you will not be selling the blimps, but merely making them available to contributors. This appears to be nothing more than a means of distribution to insure that the blimps will serve their political advertising function. It's clear that one who has seen fit to contribute to a candidate is most likely to be a vocal proponent of that candidate and display any campaign literature, etc., pertaining to him/her. The situation you describe seems no different from a candidate giving bumper stickers,

posters, or other campaign material to a contributor. You have merely chosen to distribute an item somewhat unique to Florida political campaigns. But uniqueness does not eliminate it as a permissible campaign device.

It should be cautioned however that such blimps, or any item of value, may not be given a candidate in exchange for one's vote. s. 104.061(2), F.S. This statute reads as follows:

"(2) No person shall directly or indirectly give or promise anything of value to another intending thereby to buy his or another's vote or to corruptly influence him or another in casting his vote. ..."

The Attorney General has previously opined that this statute does not prevent the free distribution of items of nominal value by a candidate. Op. Att'y Gen. Fla. 066-35 (April 8, 1966). That opinion made the following determination in its analysis of certain amendments to the election law by the 1965 legislature:

"it would appear. . .that it was the intent of the legislature to liberalize the law to the extent it would permit a candidate to give away nominal items in furtherance of his candidacy so long as the give a-ways were not in exchange for a vote. It is doubtful that an elector's vote could be bought with any of the . . .nominal cost items frequently used by candidates in political campaigns. The primary purpose of using such items is to give the elector some slight tangible object on which the candidate's name can be imprinted with the thought in mind that the elector will not discard it as quickly as he would an ordinary campaign button or piece of campaign literature." Id. (e.s.).

This 1966 opinion was reaffirmed by the Attorney General in a June 12, 1975 informal opinion to John Lloyd, then General Counsel of Broward County, which considered the current language of s. 104.061 (2), F.S. The giving of blimps to your contributors would seem to be the type of activity contemplated by these opinions.

Accordingly, it is the opinion of this office that blimps being utilized as campaign advertising items may be given to contributors upon receipt of a contribution.

SUMMARY

The distribution of items of nominal value to contributors by a candidate is not prohibited by the election laws, provided such items are not given for the purpose of buying or corruptly influencing the recipient's vote. If the item is sold by the candidate to someone, the proceeds must be reported on that candidate's campaign treasurer's report as a contribution by the purchaser.