

DE 83-07 April 22, 1983

**POLITICAL ADVERTISING - THINGS OF VALUE
SECTION 104.061(2), FLORIDA STATUTES**

To: Mr. Robert L. Lyttle, Jr., Councilman, District #5, 2612 Carol Drive, Melbourne, Florida 32935

Prepared by: Division of Elections

Pursuant to your request, this is a formal elections opinion under Section 106.23(2), Florida Statutes, (1981) on essentially the following question:

Is a cigarette lighter used as a means to advertise the candidacy of a city commissioner for re-election illegal under Section 104.061, Florida Statutes (1981)?

The candidate wishes to distribute 5,000 cigarette lighters at a cost of \$1,000 to promote his candidacy for city council. The lighters will read: "Vote Bob Lyttle, Councilman, Paid Political Advertisement." There is no dispute that in and of itself the lighters are a form of political advertisement within the meaning of Section 106.142 and as such must include the political disclaimer required by Section 106.143, F.S.

The issue here is whether distribution of the lighters to electors in a political campaign would violate Section 104.061(2)¹ which states:

(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. Any person who violates this subsection is guilty of a felony in the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. However this subsection shall not apply to the serving of food to be consumed at a political rally or meeting or to any item which is used as a political advertisement, including a campaign message designed to be worn by a person.

The key elements necessary for a violation are (1) the intent to buy another's vote or corruptly influence another in casting a vote, (2) by giving or promising anything of value.

See, Trushin v. State of Florida, supra.

Under the present circumstances I do not believe that the distribution of a 20¢ cigarette lighter, with the proper political disclaimer constitutes an intent to buy another's vote with anything of value. While there may be a fine line between mere distribution of political paraphernalia and intent to buy votes with something of value, I am unable to see a Section 104.061 violation in the distribution of a relatively inexpensive item. Be

aware that the ultimate determination of a criminal violation of Section 104.061, Florida Statutes rests with the circuit courts.

The constitutionality of this provision was recently upheld by the Florida Supreme Court in *Trushin v. State*, 425 So. 2d 1126 (1982).