

DE 87-05 - June 10, 1987

**Purchase of Nonpartisan Advertisement in Partisan Publication by a Judicial Candidate
Sections 105.011 and 105.071, Florida Statutes**

*To: Honorable Janet Reno, State Attorney, 1351 Northwest 12 Street, Sixth Floor, Miami, Florida
33125*

Attention: Ms. Katherine Fernandez Rundle, Chief Assistant State Attorney

Prepared by: Division of Elections

This is in response to your request for an opinion from the division. You specifically asked:

Whether a judicial candidate is prohibited from purchasing a nonpartisan advertisement in a partisan publication.

A judicial candidate in Dade County allegedly purchased advertisements in two political club publications. Representatives of the publications indicate that any candidate, regardless of party affiliation, may advertise in the publications. In addition, the judicial candidate allegedly attempted to purchase an advertisement in the Dade County Democratic Party Journal but was told that his advertisement would be inappropriate and his money for the advertisement was refunded.

Section 105.011(2), Florida Statutes, defines judicial office as a nonpartisan office and provides that a judicial candidate for election or retention is prohibited from campaigning or qualifying for such office based upon party affiliation. Moreover, Section 105.071(1), Florida Statutes, prohibits candidates for judicial office from participating in partisan political party activities. Section 105.09, Florida Statutes, prohibits any political party or partisan political organization from endorsing, supporting or assisting a candidate for judicial office.

Section 105.071, Florida Statutes, limits a judicial candidate's political activities. A judicial candidate may 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 for 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.

The prohibited partisan political activities in Section 105.071, Florida Statutes, all relate to political party activities. The judicial candidate may not participate in "any political party activities," "campaign as a political party member," "publicly represent or advertise himself as a member of any political party," "make contributions to any political party funds," "accept contributions from any political party," "solicit contributions for any political party," or "accept or retain a place on any political party committee." (Emphasis added.)

In the division's opinion, the purchase of advertisement in a partisan publication under the circumstances you indicate does not violate the above prohibitions for three reasons. First, even though the judicial candidate purchased advertising in a publication of what appears to be a partisan political organization, it does not appear that such organization endorsed, assisted or supported the judicial candidate. The clubs indicated they would sell advertisements to any person regardless of party affiliation. Second, the advertisement did not indicate any party affiliation, nor otherwise violate Section 105.071, Florida Statutes. Finally, the judicial candidate did not participate in any partisan political party activities since the club is not a political party.

While political parties are not statutorily defined, there are specific references to political parties and their activities. Chapter 103, Florida Statutes, provides that political parties are represented by a state executive committee and the state executive committee of a political party must file with the Department of State. Sections 103.091(1) and (3), Florida Statutes. At the present time only two political party state executive committees are on file with the Department of State -- the Florida Democratic Party and the Republican Party of Florida. The state executive committee of a political party may by rule establish county executive committees and other committees. Section 103.091(1), Florida Statutes. Nowhere in Chapter 103, Florida Statutes, does it equate a political club with a political party.

We will not address the question of whether a judicial candidate may purchase a nonpartisan advertisement in a publication which is published by a political party since the judicial candidate's money for the advertisement in the Dade County Party Journal was refunded and an advertisement for the judicial candidate did not appear in the publication.

This opinion does not address the Code of Judicial Conduct or the Florida Judicial Qualifications Commission Rules as relates to the question of a judicial candidate advertising in a partisan publication since such matters are outside the division's jurisdiction.

SUMMARY

It is the division's opinion that a judicial candidate may purchase a nonpartisan advertisement in a

publication which is published by a political club if such advertising does not indicate that the judicial candidate is affiliated with a certain political party.