

DE 88-45 - November 2, 1988

Sections 106.011(1) and 106.03, F.S.

To: Ms. Valerie Boykin, Post Office Box 12144, Panama City, Florida 32401

Prepared by: Division of Elections

This is in response to your request for an advisory opinion. Under Section 106.23(2), Florida Statutes, the Division has authority to issue advisory opinions. Your specific question is:

Whether three persons who print and sell T-shirts displaying the last name of an incumbent candidate within the international symbol for "No," must register as a political committee pursuant to Section 106.03, Florida Statutes.

A political committee is defined by Section 106.011(1), Florida Statutes, in pertinent part as:

...a combination of two or more individuals, or a person other than an individual, the primary or incidental purpose of which is to support or oppose any candidate, issue, or political party, which accepts contributions or makes expenditures during a calendar year in an aggregate amount in excess of \$500.... (Emphasis added.)

From the facts presented in your letter, it appears that what began as an expression of opposition to a candidate by three individuals has turned into a profit-making enterprise. The fact that the primary purpose of your informal partnership may no longer be purely political, however, does not remove it from the scope of the statute. Under the definition cited above, a group may be deemed a political committee even if supporting or opposing a candidate is merely incidental to its existence.

In addition, two or more individuals or a person other than an individual who accepts contributions or makes expenditures for the purpose of influencing the results of an election during a calendar year in excess of \$500 in the aggregate must register as a political committee. Section 106.011(3),(4), Fla. Stat. Assuming the monetary requirement has been met, the next question to be addressed is whether your partnership accepts contributions or makes expenditures for the purpose of influencing the results of an election.

In DE 78-12, the Division was asked to determine whether the receipt of certain materials from a public agency by a political committee constituted a contribution made for the purposes of influencing the results of an election. In finding that the materials were not a contribution in that they were prepared by a public agency in its normal course of business and were available to the general public, the opinion noted that this office has applied a broad interpretation to the key definitional language in order to fully implement the legislative intent of Chapter 106, Florida Statutes. DE 78-12 opined that anything of value which directly or indirectly influences a political campaign must be designated a contribution, or by analogy an expenditure, and must be reported.

While the statute has been read broadly by the Division, not every payment of money associated with a campaign has been deemed a contribution or an expenditure. The disclosure requirements in Chapter 106, Florida Statutes, are designed to minimize corrupting influences, both actual and apparent, in the electoral process. When this purpose is not furthered by application of the statute in a particular instance, the Division has often declined to find that a payment is a contribution or expenditure. Thus, in DE 78-37, the Division concluded that the sale of a candidate's property does not constitute a contribution where the purchaser is either unaware, or not solely motivated by, the fact that the sale proceeds may go to a political campaign. Similarly, in DE 76-27, the Division found that moneys donated to purchase real property for a political party headquarters, but not manifestly given or received to influence the results of an election, were not a reportable contribution under Chapter 106, Florida Statutes.

Pursuant to this reasoning, moneys collected from the T-shirt sales at issue here could not fairly be characterized as contributions as they do not go to a political campaign. Instead, they are retained by you as profits.

In DE 78-36, this office determined that miniature blimps embossed with a candidate's name were designed to promote his candidacy by means of a particular type of display and, therefore, constituted political advertising. As such, concluded the Division, the blimps were a legitimate campaign expenditure since they were obviously intended to influence the results of an election.

While the T-shirts at issue here are a similar type of political advertising, the two situations are distinguishable. The blimps described above were made available, not sold, to persons contributing to the candidate's campaign. The money spent on the blimps was characterized by the Division as an expenditure because its primary purpose was to influence the results of an election by promoting a particular candidate and raising funds for his campaign. Its purpose was not to make money for the candidate as an entrepreneur. By contrast, you and your partners are splitting the profits equally from the T-shirt sales and will report the income on your individual tax returns.

To find that funds you spend on printing the shirts are "expenditures" or that the monies you receive from selling them are "contributions" would not further the legislative goals of Chapter 106, Florida Statutes. The actuality, or appearance of corrupting influences, in the electoral process would not be diminished by requiring you to register as a political committee since the money you spend and receive is to further your own interests rather than those of a political campaign. This rationale was used by the United States Supreme Court in Buckley v. Valeo, 424 U.S. 1 (1976), in striking down a statutory limitation on expenditures for express advocacy of a candidate made independently of the candidate and his campaign. Wrote the Court, "The absence of prearrangement and coordination of an expenditure with the candidate or his agent...alleviates the danger that the expenditures will be given as a quid pro quo for improper commitments from the candidate." Id. at 424 U.S. 46, 48 (1976).

SUMMARY

Three persons who print and sell T-shirts displaying the last name of an incumbent candidate within

the international symbol for "No" do not constitute a political committee for the purposes of Chapter 106, Florida Statutes, in that they do not make "expenditures" or receive "contributions" for the purpose of influencing the results of an election.