

DE 90-17 - March 27, 1990

**Campaign Activity of Judicial Candidate
Section 105.071, F.S.**

To: Mr. David R. Wellens, 1323 Southeast Third Avenue, Fort Lauderdale, Florida 33316

Prepared by: Division of Elections

This is in response to your request for an advisory opinion regarding campaign activity for a judicial candidate under the Florida Election Code, Chapters 97-106, Florida Statutes. As you are a candidate for circuit court judge, the Division of Elections has authority under Section 106.23(2), Florida Statutes, to issue an advisory opinion to you relating to the Florida Election Code.

Your letter sets forth six questions as to whether certain activities are prohibited by the Florida Election Code. Your specific questions are as follows:

1. Can a nonpartisan judicial candidate, who is not invited for the purpose of speaking as to his candidacy go to the premises upon which a political party is holding a political meeting and stand at the doorway wearing his judicial candidate's badge for the purpose of greeting the delegates and party members on their exit?
2. Can a nonpartisan judicial candidate, who has not been invited for the purpose of speaking as to his candidacy, attend a luncheon of presidents of various clubs for a political party for the purpose of displaying his judicial candidate's badge and informing them of his candidacy?

If the answer to this question is in the affirmative, can the lunch ticket be paid from the candidate's campaign account?
3. Can a nonpartisan judicial candidate, who has not been invited for the purpose of speaking as to his candidacy, attend a dinner dance sponsored by a partisan club for the purpose of entertainment and displaying his badge, as well as informing the patrons of his candidacy?
4. Can a nonpartisan judicial candidate purchase with funds contributed to his campaign account advertising space for a candidacy in a partisan club magazine or publication related to a partisan function, as long as the ad makes no reference to any endorsement of the candidate?
5. Can a nonpartisan judicial candidate meet privately with leaders of various partisan groups or associations for the purpose of requesting an invitation to speak on his own behalf at future partisan functions?

6. When addressing an audience, can a nonpartisan judicial candidate who is asked a direct question, "What political party are you registered with?", respond to the question? (You state

that it is an unsatisfactory and evasive reply to give the response that a candidate is running in a nonpartisan race.)

The answer to your first three questions is no. The answer to questions four, five, and six is yes.

The Division of Elections has issued several opinions which address the issues raised in questions one through four. I am enclosing for your information copies of DE 90-02, 87-05, 76-23, and 76-19.

In reference to your first three questions, Section 105.071, Florida Statutes, mandates that 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 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 activities set forth in questions one, two, and three are prohibited under Section 105.071, Florida Statutes. The only exception to this is set forth in DE 76-19 and DE 76-23, namely that a judicial candidate may accept an invitation to speak in behalf of his own candidacy.

In reference to your fourth question, whether a nonpartisan judicial candidate may purchase

advertising space in a partisan magazine or publication with campaign funds, please see DE 90-02 and DE 87-05.

In DE 87-05, the Division opined 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."

In reference to your fifth question, can a nonpartisan judicial candidate meet privately with leaders of various partisan groups or associations for the purpose of requesting an invitation to speak on his own behalf at future partisan functions, we answer this in the affirmative, but the judicial candidate should exercise caution so that Section 105.071, Florida Statutes, is not violated.

In reference to your sixth question, when addressing an audience, can a nonpartisan judicial candidate who is asked a direct question, "What political party are you registered with?", respond to the question, Section 105.071(1), Florida Statutes, provides that a candidate for judicial office 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. If the candidate is registered as a member as a political party, such information will be contained in the registration books in each county. Pursuant to Section 98.211(1)(a), Florida Statutes, such information is public information. However, again the judicial candidate should exercise caution that Sections 105.071(2) and (3), Florida Statutes, are not violated as these sections prohibit a candidate for judicial office from campaigning as a member of any political party and publicly representing or advertising himself as a member of any political party.

SUMMARY

A judicial candidate who is not invited for the purpose of speaking as to his candidacy may not go to the premises upon which a political party is holding a political meeting and stand at the doorway wearing his judicial candidate's badge for the purpose of greeting the delegates and party members on their exit; attend a luncheon of presidents of various clubs for a political party for the purpose of displaying his judicial candidate's badge and informing them of his candidacy; or, attend a dinner dance sponsored by a partisan club for the purpose of entertainment and displaying his badge, as well as informing the patrons of his candidacy.

A judicial candidate may accept an invitation to speak at a partisan function in behalf of his own candidacy; a judicial candidate may purchase advertising space in a partisan magazine or publication with campaign funds; a judicial candidate may meet privately with leaders of various partisan groups or associations for the purpose of requesting an invitation to speak on his own behalf at future partisan functions; and, when addressing an audience, a judicial candidate who is asked the direct question, "What political party are you registered with?" may respond to the question. However, when a judicial candidate is meeting privately with leaders of various partisan groups or associations for the purpose of requesting an invitation to speak on his own behalf at future partisan functions or answering the question as to what political party he is registered with, he should exercise caution so that Section 105.071, Florida Statutes, is not violated.

NOTE: But see also Judicial Ethics Advisory Committee Opinion 90-16, as this Division opinion is rendered in reference to the Florida Election Code requirements only.