

DE 92-08 - June 16, 1992

**Petitions for Independent Candidates for Federal Office
Sections 103.021(1),(3), and 103.022, F.S.; Art. II, Section 9, Fla. Const.; Rule 1S-2.0081(1)(d), F.
A.C.**

TO: Mr. Lawrence P. Stevenson, Holland and Knight, Attorneys for the H. Ross Perot Petition Campaign, Post Office Drawer 810, Tallahassee, Florida 32302

Prepared by: Division of Elections

This is in reference to your request for an advisory opinion relating to the H. Ross Perot Petition Campaign. Under Section 106.23(2), Florida Statutes, the Division of Elections has authority to issue advisory opinions relating to the Florida Election Code, Chapters 97-106, Florida Statutes, to several categories of persons, including persons or organizations engaged in political activity. You represent the H. Ross Perot Petition Campaign, which is coordinating a petition drive to place the names of H. Ross Perot and James B. Stockdale on the general election ballot as independent candidates for President and Vice President, pursuant to Section 103.021(3), Florida Statutes. Therefore, the division has authority to issue this opinion to the H. Ross Perot Petition Campaign.

You asked several questions and for clarity we will state each question and then answer that particular question.

1. Must the H. Ross Perot Petition Campaign register as either a political committee or committee of continuous existence pursuant to Chapter 106, Florida Statutes?

No. The Federal Elections Campaign Act of 1971 regulates the elections for federal political offices and supersedes the provisions of Chapter 106, Florida Statutes, as it relates to registering of political committees for candidates or reporting of contributions to or expenditures for a federal candidate.

2. Section 103.021(3), Florida Statutes, prescribes no particular form for the petition. It is our understanding that if a petition is in substantial compliance with the sample petition provided by the Division of Elections (Attachment 1), a supervisor of elections may not reject it for alleged irregularities as to size, shape, weight of paper, or other matters relating strictly to the form of the document submitted. Is this understanding correct?

Section 103.021(3), Florida Statutes, provides that independent candidates for President and Vice President may have their names printed on the general election ballots if a petition is signed by one percent of the registered electors in the state. No format for the petition is specified in the statute, although the statute does provide that a separate petition from each county for which signatures are solicited must be submitted to the respective supervisor of elections no later than July 15 of the presidential election year.

Rule 1S-2.0081, Florida Administrative Code, provides petition criteria for petitions whose format is not specified in the Constitution, general or special laws, or local ordinances. A copy of this rule is attached for your information. (See Attachment #1.)

Subsection (2) of this rule provides that the petition may be printed on cards or sheets of paper which only one signee may sign, or if printed on cards or sheets of paper which more than one signee may sign, each individual card or sheet of paper must not contain signatures from signees of more than one county. In addition, the rule provides that the minimum size of the petition form shall be three inches by five inches and the maximum size shall be 8 1/2 inches by 11 inches.

3. May Petitioner publish in a newspaper or other periodical a petition which is substantially similar to the sample petition provided by the Division of Elections, so that registered electors may clip the petition from the newspaper, fill it out, and submit it? Would a supervisor of elections be permitted to reject a petition because it is on newsprint, if it otherwise conforms to the legal requisites for such petitions?

Rule 1S-2.0081(1)(d), Florida Administrative Code, provides that petition forms may be reproduced in newspapers, magazines, or other forms of printed mass media provided the forms meet the criteria of this rule.

4. Petitioner is currently circulating petitions in Spanish in Dade County. Is a supervisor of elections required to accept petitions in languages other than English, assuming they are otherwise in compliance with the law? Is Petitioner required to circulate petitions in Spanish in those counties in the State of Florida subject to the minority language provisions of the federal Voting Rights Act, 42 U.S.C.A. Sections 1973 et seq.? On the latter question, Petitioner directs you to Delgado v. Smith, 861 F.2d 1489 (11th Cir. 1988), cert. denied 492 U.S. 918 (1989), in which the court stated: "Congress has never shown any intent, either in the text of its legislation or in the legislative history, to expand coverage of the [Voting Rights] Act to materials distributed by private citizens." 861 F.2d at 1493.

The Division of Elections does not have jurisdiction to issue an opinion as to whether a petitioner is required to circulate petitions in Spanish in those counties in the state subject to the minority language provisions of the Voting Rights Act. The division's authority to issue opinions is limited to the Florida Election Code, Chapters 97-106, Florida Statutes. In addition, Florida law does not address in what language a petition may be circulated. The Florida Constitution provides that "English is the official language of the State of Florida." Art II, Section 9, Fla. Const. However, as the state is subject to the minority language provisions of the federal Voting Rights Act and as such, must circulate election-related materials in the Spanish language in several counties, we see no reason why a supervisor of elections should not accept a petition circulated in the Spanish language as long as the text of the petition is substantially the same as the text of the petition circulated in the English language.

If a supervisor of elections does not speak the Spanish language, some type of proof of the text of a petition circulated in the Spanish language may be required by the supervisor before verifying signatures on such petitions. We note that the supervisor in Dade County prints petitions for

candidates and has the text of the petition printed in the English language on one side and in the Spanish language on the other side so that an elector may read the petition in the language which he best understands. (See Attachment #2.) If a petition appeared in a newspaper or magazine, it could also be printed in both languages.

5. Finally, Petitioner notes that Section 103.021, Florida Statutes, is silent as to the method by which an independent presidential candidate must submit its slate of electors. State executive committees name the slate for political parties (Section 103.021(1), Florida Statutes) and write-in candidates simply submit a list of their chosen names (Section 103.022, Florida Statutes); however, independent candidates are given no explicit guidance on this matter. Assuming Petitioner succeeds in collecting the required number of signatures on its petition, how should it proceed in naming and submitting its slate of electors under Florida law?

Section 103.021(3), Florida Statutes, provides that independent candidate electors are certified in the same manner as other party candidates. Therefore, as provided for party candidates in Section 103.021 (1), Florida Statutes, the independent candidate recommends his electors to the Governor who, in turn, is required to nominate and certify such electors to the Department of State on or before September 1, in each presidential election year.

SUMMARY

A presidential candidate's campaign does not register with the Division of Elections as either a political committee or committee of continuous existence pursuant to Chapter 106, Florida Statutes. The Federal Elections Campaign Act of 1971 regulates the elections for federal political offices and supersedes the state requirements.

Petitions circulated to place the names of independent candidates on the ballot for President and Vice President may be printed on cards or sheets of paper which only one signee may sign, or if printed on cards or sheets of paper which more than one signee may sign, each individual card or sheet of paper must not contain signatures from signees of more than one county. The minimum size of the petition form shall be three inches by five inches and the maximum size shall be 8 1/2 inches by 11 inches.

Petition forms may be reproduced in newspapers, magazines, or other forms of printed mass media provided the forms meet the criteria of this rule.

The Division of Elections does not have jurisdiction to issue an opinion as to whether a petitioner is required to circulate petitions in Spanish in those counties in the state subject to the minority language provisions of the Voting Rights Act. We see no reason why a supervisor of elections should not accept a petition circulated in the Spanish language as long as the text of the petition is substantially the same as the text of the petition circulated in the English language. If a supervisor of elections does not speak the Spanish language, some type of proof of the text of a petition circulated in the Spanish language may be required by the supervisor before verifying signatures on such petitions.

Independent candidate electors are nominated and certified in the same manner as are electors for

party candidates.