

The statutes addressed in this opinion have changed. Please consult current Florida law.

DE 94-12 - July 12, 1994

Citizens League Endorsing A Candidate in League's Publication Sections 106.011(1) and (17), 106.143, and 106.144(1)(a)-(e), F.S.

TO: Mr. William A. Grady, 20 Barbera Lane, Palm Coast, Florida 32137

Prepared by: Division of Elections

This is in response to your request for an advisory opinion regarding the circulation of a "newspaper" and "political endorsements." Your organization, the Flagler County Citizens League (League), is contemplating making political endorsements of candidates and issues in its "newspaper." Therefore, pursuant to Section 106.23(2), Florida Statutes, the Division has authority to render this opinion to you.

You ask whether the League is required to register as a political committee if it publishes an endorsement for a candidate or an issue in its "newspaper." You also ask whether the League is required to file a statement of endorsement pursuant to Section 106.144, Florida Statutes.

According to your letter and telephone conversations with this office, the League publishes a "bimonthly newspaper" throughout the county as a "supplement to the local general circulation newspaper, The Flagler Palm Coast News Tribune (Tribune)." You further state that your publication will be inserted inside the Tribune, that future publications intend to contain candidate and issue endorsements, and that the cost for such endorsements will not exceed \$500. _____

Moreover, you have provided us with a copy of the League's publication, the Flagler Focus. Prominently displayed at the top of page one are the words "Paid Political Advertisement Paid for by the Flagler County Citizens' League, Bill Lawless, Treasurer." Underneath the name of the paper, the following statement appears in italicized bold print:

The editors of the Flagler Focus believe that there must be a balance to the often unsubstantiated and invalid opinions publicly expressed by several groups and individuals in this county. The purpose of the Flagler Focus is to point out some of the errors and untruths reported by these individuals, and to identify who among them are responsible. The intent of the Flagler Focus is to make known some of these spokespersons so that we will all recognize who they are and where they are coming from.

As you have acknowledged, the primary purpose of the "newspaper" is to expose unsubstantiated and invalid opinions of individuals in the county, some of whom are elected public officials. It, therefore, seems clear that the "newspaper" is a political advertisement and that the publisher considers it as such, inasmuch as he printed the political disclaimer mandated by Section 106.143, Florida Statutes, on the face of the "newspaper."

It also seems clear from the information you provided that the Flagler Focus is not what the ordinary person would consider a newspaper as that term is commonly understood. Newspaper means a paper that is printed and distributed daily or weekly which contains news, articles of opinion, feature articles, and advertising. The American Heritage College Dictionary, 3d ed. 1993. Accord: Webster's Ninth New Collegiate Dictionary, 1984; Webster's Third New International Dictionary of the English Language Unabridged, 1967.

Therefore, it is our opinion that, given its self-described intent and contents, the Flagler Focus is not properly categorized as a newspaper. Instead, the publication appears to be a political advertisement that is placed in a newspaper of general circulation.

As to your first question, political committee is defined at Section 106.011(1), Florida Statutes, to mean:

[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....

Section 106.011(1), Florida Statutes, later exempts a person from registering as a political committee if such person is a business entity formed for purposes other than to support or oppose candidates or issues, its political activities are limited to contributions to candidates, political parties, or political committees or expenditures in support of or opposition to an issue from business funds, and no contributions are received by such business entity.

You indicate that the League is a business entity formed for purposes other than to support or oppose candidates or issues; that the League will pay for all of its expenses to publish and circulate the League's intended publication from the League's business funds; and that the League will not receive any contributions for the purpose of supporting or opposing candidates or issues, or making expenditures in support or opposition to an issue from funds other than the League's business funds. You also indicate that, occasionally, the League now asks for donations to assist in covering publication costs, which do not support or oppose a candidate or issue. Moreover, according to your representation, the cost of any proposed publications that would support or oppose a candidate or issue will be less than \$500.

Based on these facts, it is the Division's opinion that the League is not required to register as a political committee. However, if the League anticipates receiving contributions in excess of \$500 for the purpose of supporting or opposing candidates or issues in its proposed publications or anticipates making an expenditure in excess of \$500 in support of or in opposition to an issue, it would need to register as a political committee.

As to your second question, any group, club, association, or other organization, except organizations affiliated with political parties, which intends to endorse or oppose a candidate or referendum by means of political advertisements, must, prior to publishing, issuing, broadcasting, or otherwise distributing such advertisement, file a statement of endorsement. While Section 106.144, Florida

Statutes, is silent as to where such statements must be filed for referenda, it would be logical to file a statement for a municipal election with the municipal clerk, for a county election with the supervisor of elections, and for all other elections with the Division of Elections.

Pursuant to Section 106.144(1)(a)-(e), Florida Statutes, a statement of endorsement must include the following:

- (a) The date the organization was chartered and the number of members during the most recent 12 months and how many of these members, if any, have paid dues;
- (b) A list of current officers or directors of such organization and a statement as to their method of selection;
- (c) A statement of the procedures used by such organization in determining which candidates to endorse or oppose;
- (d) If political advertisements for endorsement or opposition purposes are to be paid from funds other than the dues of the membership of the organization, a statement describing the sources of such funds; and
- (e) The amount of funds paid to the organization by candidates for public office, including payments in the form of dues, and the name of, and office sought by, each such candidate.

Therefore, since the League's proposed publication would constitute a political advertisement as defined in Section 106.011(17), Florida Statutes, the League would need to file a statement of endorsement.

SUMMARY

If a citizens' league anticipates receiving contributions in excess of \$500 for the purpose of supporting or opposing candidates or issues, or makes an expenditure in excess of \$500 in support of or in opposition to an issue from funds other than business funds, the league must register as a political committee. Any group, club, association, or organization, except organizations affiliated with political parties, must file a statement of endorsement if it intends to endorse or oppose a candidate or a referendum by means of a political advertisement prior to publishing, issuing, broadcasting, or otherwise distributing such advertisement.