

# Rescinded in part, see 99-04

DE 98-04 - April 2, 1998

## Political Advertising §§106.071(1), 106.143(1), Fla. Stat.

*TO: The Honorable Mary W. Morgan, Collier County Supervisor of Elections, 3301 Tamiami Trail East, Building B, Naples, Florida 34112-4902*

*Prepared by: Division of Elections*

This is in response to your request for an advisory opinion regarding political advertising and independent expenditures in light of the Florida Supreme Court's decision in *Doe v. Mortham*, No. 88,677 (Fla. Mar. 19, 1998) (*Doe*). You are the Supervisor of Elections in Collier County and, pursuant to section 106.23, Florida Statutes, the Division has authority to render this opinion to you.

In light of the *Doe* decision, you have asked several related questions (and we have consolidated them) as to what extent this decision affects Florida's political disclaimer requirements with respect to general political advertising requirements, and like advertising which is in the form of an independent expenditure.

In our opinion, the court's holding in *Doe* is simple and straightforward. Borrowing from the U.S. Supreme Court's decision in *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995), the Florida Supreme Court held:

...section 106.143(1)(b) is inapplicable to the **personal pamphleteering of individuals acting independently and using only their own modest resources**. As for section 106.071(1), only to the extent that the last sentence in this section **requires identification of independent advertisements made by individuals** does it run afoul of the first amendment.

*Doe*, at 7 (*emphasis added*).

The court then went on to truncate the last sentence of section 106.071(1), Florida Statutes, to read "any political advertisement paid for by an independent expenditure shall prominently state 'Paid political advertisement.'" *Doe* at 7, *fn.17*. Likewise, paragraph (b) of section 106.143(1), Florida Statutes, requires the name of the "persons or organizations sponsoring the advertisement" in addition to the general disclaimer of "paid political advertisement." §106.143(1)(a), (b), Fla. Stat. While the court chose not to rewrite this statute in a footnote, it would appear that it needs to be treated in the same manner.

The common theme in this analysis is that the court was concerned with individuals like Margret McIntyre who use their "own modest resources" to make political statements and was attempting to give a saving construction to the statutes at issue here.<sup>1</sup> In addition, the first sentence of section 106.071(1), Florida Statutes, remains, and still provides, that any independent expenditure of \$100 or

more must be disclosed on a special report to either the county supervisor of elections or other appropriate filing officer in the same manner as campaign treasurer's reports. §106.071(1), Fla. Stat. Furthermore, by truncating the last sentence of section 106.071(1), Florida Statutes, but leaving the first, it can be inferred that the court may consider an expenditure of less than \$100 in the aggregate as "modest resources."<sup>2</sup>

In view of the foregoing, we do not believe that this decision affects candidates, political committees, political parties, corporations, or other groups or entities that spend large amounts of money on political advertising. As a result, we believe that sections 106.143(1) and 106.071(1), Florida Statutes, still require the full political disclaimer, unless the person responsible for the advertisement is a private individual (natural person) who has made only modest expenditures of less than \$100 in the aggregate.

### SUMMARY

Sections 106.143(1)(b) and 106.071(1), Florida Statutes, require the full political disclaimer unless the person responsible for the advertisement is a private individual who is not a candidate, and, who spends less than \$100 in the aggregate.

<sup>1</sup> Margret McIntyre was the appellant in *McIntyre* and had circulated a pamphlet at a school board meeting in opposition to a proposed referendum. She had produced the pamphlet using a home computer and reproduced copies at a print shop. See *DOE, at part III* wherein the court discusses the pertinent facts in *McIntyre*.

<sup>2</sup> *Cf., Thayer v. State, 335 So.2d 815 (Fla. 1976)*. The legislature is presumed to have considered the meaning of the words it uses in a statute and we believe that courts are owed the same deference when interpreting those statutes.