

DE 98-07 - May 11, 1998

Political Advertising

§§104.071(1)(c),(2), 106.021(1)(b),106.11(1), 106.143(3),(4)(a),(5),106.144, Fla. Stat.

TO: The Honorable Mary W. Morgan, Supervisor of Elections, Collier Government Complex, 3301 Tamiami Trail East, Naples, Florida 34112-4902

Prepared by: Division of Elections

This is in response to your request for an opinion dated April 10, 1998. The Division is authorized to provide advisory opinions pursuant to section 106.23(2), Florida Statutes, when requested by a local officer having election-related duties. Essentially, you have asked a number of questions relating to the requirements imposed on candidates who wish to engage in joint advertising. I have attempted to answer the questions that are applicable in the discussion that follows.

As you correctly noted, section 104.071(1)(c), Florida Statutes, prohibits a candidate from directly or indirectly contributing any money or thing of value for the furtherance of the candidacy of another candidate. *But see, §104.071(2), Fla. Stat. (candidates are permitted to make contributions to other candidates from personal or business funds).* Candidates may voluntarily form a slate of candidates whether or not they are members of the same political party, but given the restriction in section 104.071(1)(c), Florida Statutes, they must share equally in the cost of any joint advertisement. *See generally, DE 76-12, 83-16, 88-39, and Informal Opinion to Eugene Steinfeld, August 15, 1990.* By sharing equally in the cost of the advertisement, the candidates are doing no more than if they each ran a separate ad and represented in the separate ad that the other candidate supported their candidacy. *See §106.143(3), Fla. Stat.*

For example, a joint advertisement by three candidates that costs \$300 must be paid and reported as a \$100 expenditure from each of the candidates. In addition, we recommend that each candidate pay his or her share of the advertisement directly to the firm or consultant providing the service so that each candidate's funds remain separate and apart from each other. *See, Informal Opinion to Senator Charlie Crist, April 15, 1997 (regarding the use of media consultants and advertising expenditures).*

You also ask whether candidates in the state could form a political committee and make contributions from their respective campaign accounts for the purpose of making advertising expenditures. Section 106.11(1), Florida Statutes, reads, in part:

The campaign account shall be separate from any personal or other account and shall be used only for the purpose of depositing contributions and making expenditures for the candidate or political committee.

See also, §106.021(1)(b), Fla. Stat. This arrangement would constitute the commingling of campaign funds, in violation of sections 106.021 and 106.11, Florida Statutes. It would also violate section

104.071(1)(c), Florida Statutes, because the candidates, by pooling their campaign funds, would be contributing campaign funds to each other. Thus, the answer to this question is no.

An endorsement of the other candidates in the slate might be inferred from a joint advertisement; however, such an endorsement would not preclude the use of joint advertising or implicate the provisions of section 106.144, Florida Statutes. In general, when a slate of candidates conducts a joint advertisement, each candidate must comply with the provisions relating to political disclaimers, pursuant to section 106.143, Florida Statutes.

You ask some additional questions related to political advertising which are tangential to the central issue. Candidate approval should be provided to the firm conducting the advertising and to the other candidates in the slate. *See §106.143(4)(a), Fla. Stat.* If only one of the candidates is an incumbent, the advertisement cannot mislead the public into believing that all of the candidates in the slate are incumbents. *See 106.143(5), Fla. Stat., and DE 90-47.* While an incumbent in a joint advertisement may be providing something of value to the other candidates in the slate, this would not constitute a reportable "in-kind" contribution because of the subjective nature of its value.

SUMMARY

Candidates may form a slate and run joint advertisements, so long as they each pay an equal share of the cost of the advertisements. Candidates may not form a political committee for the purpose of pooling their campaign funds which, in turn, would be spent by the committee on behalf of one or more of the candidates. The requirements contained in section 106.143, Florida Statutes, related to political advertising, apply to each of the candidates included in the slate.