

DE 02-03 - March 18, 2002

**Use of 3-Pack Advertisements in Primary Elections
§ 106.021(6), Florida Statutes**

*To: Mr. Mark Herron, Esq., Messer, Caparello & Self, Post Office Box 1876, Tallahassee, Florida
32303-1876*

Prepared by: Division of Elections

Dear Mr. Herron:

This is in response to your request for an advisory opinion on behalf of Florida Democratic Party Chairman Bob Poe. You represent the Florida Democratic Party. Pursuant to section 106.23(2), Florida Statutes, the Division of Elections has authority to issue advisory opinions to political parties. You ask essentially the following:

Whether a political party may utilize the 3-pack provisions of section 106.021(3), F.S., to endorse candidates in a primary election context?

The answer to your question is yes. Section 106.021(3), F.S., provides in pertinent part as follows:

[E]xpenditures may be made directly by any political committee or political party regulated by chapter 103 for obtaining time, space, or services in or by any communications medium for the purpose of jointly endorsing three or more candidates, and any such expenditure shall not be considered a contribution to or on behalf of any such candidate for the purposes of this chapter.

Nothing in the statute prohibits a political party from doing so in the context of a primary election.

Your letter also raises several questions as to whether other specific provisions of the statutes would limit a political party's utilization of these ads under this section. I will address each provision you cited separately.

As the statute specifically states that 3-pack advertisements are not considered a contribution to or on behalf of any candidate for the purposes of Chapter 106, the use of such advertisements would not implicate the party contribution limitations imposed by section 106.33(3), F.S.

As to the issue of whether section 103.121(5)(b), F.S., would be applicable to a political party in this context, we concur with your statement that section 103.121(5)(b), F.S., was declared unconstitutional in *Vicory v. Democratic State Executive Committee*, Case No. 90-3595 (Fla. 2nd Circuit Leon County, January 16, 2001). Therefore, it would not be applicable.

Finally, you are correct in your conclusion that although a political party may utilize the 3-pack provisions of section 106.021(3), F.S., to endorse candidates in a primary election context, section 106.08(6), F.S., would continue to prohibit a political party from accepting, "any contribution that has been specifically designated for the partial or exclusive use of any candidate," and therefore, such funds could not be used to pay the costs associated with a 3-pack advertisement.

SUMMARY

A political party may utilize the 3-pack provisions of section 106.021(3), F.S., to endorse candidates in a primary election.

Sincerely,

L. Clayton Roberts
Director, Division of Elections

Prepared by:
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