

February 22, 2005

Ms. Chance Irvine, Chair  
Florida Elections Commission  
The Collins Building, Suite 224  
107 W. Gaines Street  
Tallahassee, FL 32300-1050

RE: DE 05-02  
Internet Political Advertisement Disclaimers;  
§106.011(13) and (17), 106.143, and 106.148  
(Repealed), Florida Statutes  
Meaning of “Prominently”; §106.143(1), Florida  
Statutes

Dear Ms. Irvine:

This is in response to your request for a formal opinion regarding the political advertisement disclaimer requirements of section 106.143, Florida Statutes, as they relate to the Internet pages posted by candidates. You are Chair of the Florida Elections Commission and pursuant to section 106.23(2), Florida Statutes, the Division of Elections has the authority to issue an opinion to you.

You state the following, “Elaine Gooding was a candidate for the Broward County Commission in the election held on November 2, 2004. During the campaign, Ms. Gooding’s staff constructed a ten page website that advocated her election and solicited contributions. The website’s homepage included links to the other nine pages. Only the homepage contains a disclaimer. Ms. Gooding is a member of the Independent Party and its website contained a link to the page on Ms. Gooding’s website that solicited contributions.”

With regard to that specific scenario, you ask the following questions:

1. If all pages of Ms. Gooding’s multi-page website could only have been accessed by going through the homepage, is only the homepage required to include a disclaimer?
2. If all pages of Ms. Gooding’s multi-page website could only have been accessed by going through the homepage, are any other pages required to contain a disclaimer?

3. If the web page on Ms. Gooding's website soliciting contributions can be directly accessed without going through the homepage, is the directly accessible web page required to contain a disclaimer?
4. If the web page soliciting contributions on Ms. Gooding's multi-page web site is not required to contain a disclaimer, which pages are required to contain a disclaimer?

The short answer to your questions is that any individual web page, including web pages which are part of a multi-page website, which meets the definition of a political advertisement must contain the disclaimer language required by section 106.143, Florida Statutes.

As you note in your letter, effective July 1, 2004 the 2004 Florida Legislature repealed section 106.148, Florida Statutes, relating to disclosure of on-line computer solicitation. However, the Legislature also amended the definition of "communications media" contained in section 106.011(13), Florida Statutes, to include the Internet. As a net result of those changes, Florida law clearly requires Internet political advertisements to comply with the political disclaimer provisions of section 106.143, F.S.

It may be helpful to view a multi-page website as analogous to a multi-page political advertisement direct mailing by a candidate. Where the multiple pages are produced in such a way that they are inseparable, such as a two-sided card (two pages) or a tri-fold flyer (possibly six pages) only one disclaimer is required. But where the pages can be separated from the others and potentially circulated separately, each page is required to bear its own disclaimer.

With Internet website pages, even those accessed through a homepage, there is always a possibility that each page could be distributed or accessed separately. A page could be copied and distributed by anyone accessing the site. Additionally, some pages might be accessed through a link to that page. Because of these possibilities, a reasonable approach would be to require that any website page that meets the definition of a political advertisement contain the disclaimer language required by section 106.143, Florida Statutes.

Additionally, you essentially ask:

What is meant by the term "prominently" as it is used in section 106.143(1), Florida Statutes?

Section 106.143(1), Florida Statutes, states:

(1)(a) Any political advertisement that is paid for by a candidate and that is published, displayed, or circulated prior to, or on the day of, any election must **prominently** state:

"Political advertisement paid for and approved by (name of candidate), (party affiliation), for (office sought)."

(b) Any other political advertisement published, displayed, or circulated prior to, or on the day of, any election must **prominently**:

1. Be marked "paid political advertisement" or with the abbreviation "pd. pol. adv."

2. State the name and address of the persons sponsoring the advertisement.

3.a.(I) State whether the advertisement and the cost of production is paid for or provided in kind by or at the expense of the entity publishing, displaying, broadcasting, or circulating the political advertisement; or

(II) State who provided or paid for the advertisement and cost of production, if different from the source of sponsorship.

b. This subparagraph does not apply if the source of the sponsorship is patently clear from the content or format of the political advertisement.

This subsection does not apply to campaign messages used by a candidate and the candidate's supporters if those messages are designed to be worn by a person. [Emphasis added]

Where a statute does not define a particular word contained therein, the rules of statutory construction require that we use the common definition of the word. *The American Heritage College Dictionary, Third Edition, 2000*, defines the word prominent as, "immediately noticeable; conspicuous." As a result, whether a disclaimer was prominently stated within a particular ad would depend on the overall advertisement itself, taking into consideration such things as the size of the advertisement, the size of the text, etc.

#### SUMMARY

Any individual web page, including web pages which are part of a multi-page website, which meets the definition of a political advertisement must contain the disclaimer language required by section 106.143, Florida Statutes.

Further, whether a political disclaimer was prominently stated within a particular political advertisement as required by section 106.143(1), Florida Statutes, would depend on the overall advertisement itself, taking into consideration such things as the size of the advertisement, the size of the text, etc. Applying

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the common definition of “prominent”, the disclaimer language should be immediately noticeable or conspicuous within the advertisement.

Sincerely,

Dawn K. Roberts  
Director, Division of Elections

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DKR/SDL/nlw