



FLORIDA DEPARTMENT *of* STATE

CHARLIE CRIST
Governor

**KURT S.
BROWNING**
Secretary of State

March 3, 2010

Honorable Scott J. Brock
Mayor, City of Coral Springs
9551 W. Sample Road
Coral Springs, Florida 33065

RE: DE 10-02
Advertising; Nonpartisan Candidate – posting party
affiliation on Internet social networking websites
§ 97.021(20), Florida Statutes.

Dear Mayor Brock:

This letter responds to a request for an advisory opinion submitted by your city attorney on behalf of the City Commission of the City of Coral Springs. Because the members of the City Commission are persons engaged in political activities, the Division of Elections has authority to issue the City Commission an opinion pursuant to section 106.23(2), Florida Statutes (2009).

Your city attorney asks:

May an elected nonpartisan City Commissioner or a candidate for such position post his or her party affiliation on [his or her] personal Facebook page, or does such posting constitute an improper political advertisement or public representation of his or her political affiliation under Chapter 106, Florida Statutes?

Your attorney states that your city ordinance provides “each candidate for elected municipal office shall not campaign as a member of any political party or publicly represent or advertise himself as a member of any political party.” The ordinance further provides that elections for municipal office in Coral Springs are nonpartisan. The Division of Elections has no authority to interpret provisions of municipal charters or ordinances; therefore, this opinion limits itself to the interpretation of Florida’s Election Code (chapters 97-106, Florida Statutes).

Section 97.021(20), Florida Statutes (2009), defines a nonpartisan office as one “for which a candidate is prohibited from campaigning or qualifying for election or retention in office based upon party affiliation.” The Election Code does not define “campaigning.” According to *Black’s Law Dictionary*, it includes all acts done to bring about a candidate’s election.¹ Therefore, the Election Code precludes a *nonpartisan candidate* from doing any act to bring about the candidate’s election *based upon party affiliation*. This prohibition would include campaigning for a nonpartisan office based upon party affiliation on an Internet social networking site. We adhere to our statements in *Division of Elections Opinion* 03-02 (February 21, 2003), where we stated to a nonpartisan candidate concerning his political advertisements:²

[A]s a nonpartisan municipal candidate, you may not publicly represent or advertise yourself as a member of any political party. Thus, information stating your political affiliation may not appear in your political advertising. It is permissible, however, for you to list partisan related experience such as “executive committee of _____ party” in campaign advertisements. In doing so you would simply be providing information on past experiences as opposed to “campaigning based on party affiliation.”

Again, the Election Code’s prohibition is against a nonpartisan *candidate* “campaigning” or qualifying for elected office *based upon party affiliation*. Once candidates are elected, they are no longer “candidates” until they again satisfy the definition of “candidate” contained in sections 97.021(4) and 106.011(16), Florida Statutes. This usually occurs when a person first appoints a campaign treasurer and designates a primary campaign depository. Under state law, therefore, nonpartisan officeholders are not prohibited from publicly representing their party affiliation unless and until they again become a “candidate” at which point they are precluded from campaigning based upon party affiliation.

SUMMARY

Florida’s Election Code defines a nonpartisan office as one “for which a candidate is prohibited from campaigning or qualifying for election or retention in office based upon party affiliation.” Therefore, a nonpartisan candidate may never campaign based upon party affiliation. This prohibition would include campaigning for a nonpartisan office based upon party affiliation on Internet social networking sites. However, the Election Code does not prohibit nonpartisan officeholders from publicly representing their party affiliation unless and until they again

¹ *Black’s Law Dictionary* (6th Ed. 1990).

² A “political advertisement” means a paid expression in a statutorily-prescribed communications media which expressly advocates the election or defeat of the candidate. § 106.011(17), Fla. Stat. (2009). A message by a candidate on a social networking site posted without any cost to the candidate would not constitute a paid expression; therefore, it would not be a “political advertisement.” However, depending on the content of the message, such a posting may constitute “campaigning.”

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become a "candidate" at which point they are precluded from campaigning based upon party affiliation.

Sincerely,

A handwritten signature in black ink, appearing to read 'DLP', with a long horizontal line extending to the right.

Donald L. Palmer
Director, Division of Elections

cc: Samuel S. Goren, City Attorney, City of Coral Springs