



FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

June 16, 2016

Mr. Mark Zehr
24690 Sandhill Boulevard, Suite 604
Punta Gorda, Florida 33983

Re: DE 16-08 Advertising – Disclaimers on
Vehicle Advertising – § 106.143, Florida
Statutes

Dear Mr. Zehr:

As a candidate, you have requested an advisory opinion regarding whether a vehicle wrap is a “political advertisement” under Florida law, and how such a wrap must be displayed in order to comply with the disclaimer requirements in Florida law. Because you are a candidate proposing to take certain actions with respect to the Florida Election Code, the Division is authorized to issue an opinion pursuant to section 106.23(2), Florida Statutes.

FACTS

In your request, you state that as a candidate for office, you desire to make a “full wrap on all sides of [your] vehicle with [your] campaign information on all sides except possibly the front.” You raise three issues: (1) whether such wrap would constitute a political advertisement; (2) whether such wrap would require disclaimers on all sides of the vehicle; and (3) how big the disclaimer must be in order to be “prominent” under section 106.143, Florida Statutes.

ANALYSIS

Issue 1: Whether your vehicle wrap is a “political advertisement” under Florida law.

Florida law defines a “political advertisement” as a certain type of paid expression that expressly advocates for or against a candidate or an issue, as follows:

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“Political advertisement” means *a paid expression in a communications medium prescribed in subsection (4)*, whether radio, television, newspaper, magazine, periodical, campaign literature, direct mail, or display or by means other than the spoken word in direct conversation, which *expressly advocates* the election or defeat of a candidate or the approval or rejection of an issue

See § 106.011(15), Fla. Stat. (emphasis supplied). In turn, “communications media” includes “broadcasting stations, newspapers, magazines, outdoor advertising facilities, printers, direct mail, advertising agencies, the Internet, and telephone companies” See § 106.011(4), Fla. Stat.

Assuming you utilize a commercial printer or person or entity in the business of producing vehicle advertising wraps, your vehicle wrap would be a paid expression in one of the communications media listed in section 106.011(4). See *id.* (listing “outdoor advertising facilities,” “printers,” and “advertising agencies” among the various “communications media”). It then would be a “political advertisement” if it expressly advocates for you as a candidate or against another candidate. See § 106.011(15), Fla. Stat.

Issue 2: Whether your vehicle wrap requires disclaimers on all sides of the vehicle.

Florida law requires “political advertisements” to include specific disclaimer language that must be stated “prominently,” as follows:

Any political advertisement that is paid for by a candidate, except a write-in candidate, and that is published, displayed, or circulated before, or on the day of, any election must *prominently* state:

1. “Political advertisement paid for and approved by (name of candidate), (party affiliation), for (office sought)”; or
2. “Paid by (name of candidate), (party affiliation), for (office sought).”

§ 106.143(1)(a), Fla. Stat. (emphasis supplied).

Although the Election Code does not define the term “prominently” or “prominent,” the word is generally defined as “[i]mmediately noticeable; conspicuous.” See *The American Heritage Dictionary of the English Language* 1409-10 (Joseph P. Pickett, ed., 5th ed. 2011); *Div. of Elections Op.* 05-02 (Feb. 22, 2005) (recognizing same definition of “prominent”). To display a political advertisement on all sides of a vehicle but not to display disclaimer language on all sides of the vehicle would likely be noncompliant with the “prominent” requirement in section 106.143. In such case an observer would presumably see the political advertisement on one side of the vehicle, while the disclaimer language would not be “immediately noticeable” because it would be on the other side of the vehicle. Therefore, the disclaimer language required by section 106.143 must be immediately noticeable and conspicuous when placed on your vehicle wrap; and this will likely require that the disclaimer language be visible from every side of the vehicle.

Issue 3: Whether the term “prominent” requires your disclaimer to be a certain size.

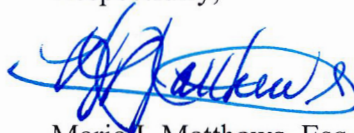
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In your final question, you ask specifically how the disclaimer language on your vehicle wrap should be displayed in order to comply with the “prominence” requirement in section 106.143. As noted above, the statutes do not provide such specific guidance with regard to the meaning of the word “prominent” insofar as that term is used in chapter 106. However, as long as the disclaimer language on your vehicle is “immediately noticeable” and “conspicuous,” it is compliant with the prominence requirement of section 106.143.

SUMMARY

A vehicle wrap applied through a commercial vendor is a paid expression in a communications medium described in section 106.011(4), Florida Statutes, and if it expressly advocates for or against a candidate, then it is a “political advertisement” under Florida law. For purposes of the disclaimer language requirements of section 106.143, Florida Statutes, such language is “prominently stated” if it is immediately noticeable and conspicuous.

Respectfully,



Maria I. Matthews, Esq.
Director, Division of Elections