

February 21, 2003

The Honorable Buddy Dyer
c/o Mark Herron, Esquire
Messer, Caparello & Self
Post Office Box 1876
Tallahassee, Florida 32302-1876

**RE: DE 03-02
Activities of Political Parties Relating to Candidates for
Nonpartisan Municipal Office §97.021(18), §106.08(2),
§106.021(3), Florida Statutes**

Dear Senator Dyer:

This is in response to your request for an advisory opinion. As a candidate for Mayor of the City of Orlando, the division has the authority to issue an opinion to you pursuant to section 106.23(2), Florida Statutes.

You ask essentially the following questions:

1. Can political advertising for or on behalf of a candidate for a nonpartisan mayoral office refer to the political party affiliation of the candidate?
2. To what extent may a political party make a contribution to or on behalf of a candidate for a nonpartisan mayoral office, and conversely, to what extent may a candidate for a nonpartisan mayoral office accept a contribution of a political party made to or on behalf of such candidate?
3. May a political party make a 3-pack expenditure pursuant to section 106.021(3), Florida Statutes; and, if so, what are the respective reporting responsibilities of the political party and the candidate for nonpartisan mayoral office regarding such an expenditure?
4. May a political party make an independent expenditure for or on behalf of a candidate for a nonpartisan mayoral office?

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You represent in your letter that the municipal office of Mayor is a nonpartisan office pursuant to the Orlando City Charter. Please note that Chapter 106, Florida Statutes, is specifically applicable to municipal offices.

In order to answer your questions, we must first look to the statutory definition of “nonpartisan office.” Section 97.021(18), Florida Statutes, defines a “nonpartisan office” to mean, “an office for which a candidate is prohibited from campaigning or qualifying for election or retention in office based on party affiliation.” This definition applies to all nonpartisan offices.

As to Question 1, as a candidate for a nonpartisan municipal office you are prohibited from campaigning based upon party affiliation. Therefore, you must be very careful that your political advertising cannot be construed as such. Each advertisement would have to be reviewed independently to determine whether it meets this test. However, pursuant to section 97.021(18), Florida Statutes, as 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.” Political advertisements done by others in consultation with you would have to meet the same requirements.

As to Question 2, a political party may make a contribution to a candidate for a nonpartisan mayoral office and a candidate for a nonpartisan mayoral office may accept a contribution from a political party. Such contributions would be subject to the limitations contained in section 106.08(2), Florida Statutes.

As to Question 3, pursuant to section 106.021(3), Florida Statutes, a political party may make direct expenditures for “obtaining time, space, or services in or by any communications medium for the purpose of jointly endorsing three or more candidates.” Further, pursuant to that section any such expenditures shall not be considered a contribution or expenditure to or on behalf of any such candidate for the purposes of Chapter 106. A nonpartisan mayoral candidate may be endorsed by any or all political parties. Therefore, a political party may make a 3-pack expenditure that would include a candidate for a nonpartisan mayoral office. A political party would report it as an expenditure, but not as a contribution. The candidate would have no responsibility to report it.

As to Question 4, a political party may make an independent expenditure regarding a candidate for a nonpartisan mayoral office.

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SUMMARY

A candidate for a nonpartisan mayoral office may not state their political affiliation in their campaign advertising. They may, however, list partisan related experience such as “executive committee of _____ party” in campaign advertisements. A political party may make a contribution to a candidate for a nonpartisan mayoral office and a candidate for a nonpartisan mayoral office may accept a contribution from a political party. Such contributions would be subject to the limitations contained in section 106.08(2), Florida Statutes. A political party may make a 3-pack expenditure that would include a candidate for a nonpartisan mayoral office. A political party may make an independent expenditure regarding a candidate for a nonpartisan mayoral office.

Sincerely,

Edward C. Kast
Director, Division of Elections

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EK/SDL/ccm