



FYI

FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

December 12, 2016

Mr. Anthony N. Caggiano
7856 Northwest 1st Street
Margate, Florida 33063

Re: DE 16-16 Advertising – Political
Disclaimers – § 106.143, Florida Statutes

Dear Mr. Caggiano:

As a candidate, you have requested an advisory opinion regarding the political disclaimer requirements for campaign videos you propose to post on your campaign website and social media. Because you are a candidate proposing to take certain actions with respect to the Florida Election Code, the Division of Elections 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 Margate city commissioner, you propose to post campaign videos on your campaign website and social media. These videos will be provided at no cost to you by a friend who is not associated with any political party,¹ and you ask several questions regarding what types of disclaimers, if any, must accompany such videos under section 106.143, Florida Statutes.

ANALYSIS

Issue 1: Whether your videos require disclaimers, and if so, what kinds of disclaimers.²

¹ Although you mention that you will report the videos as in-kind contributions, you do not ask any questions relating to this issue.

² Your first two questions, in which you ask about the necessity of disclaimers and the content thereof, have been consolidated as one issue.

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Florida law generally requires a political advertisement that is paid for by an individual other than the candidate to include particular disclaimer language, as follows:

Any other political advertisement published, displayed, or circulated before, 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 paying for the advertisement.
3. 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.

§ 106.143(1)(c), Fla. Stat. However, section 106.143 does *not* require a disclaimer if the campaign message or political advertisement meets one of the enumerated exceptions, including either of the following:

- (d) [The advertisement is placed] at no cost on an Internet website for which there is no cost to post content for public users.
- (e) [The advertisement is placed] or distributed on an unpaid profile or account which is available to the public without charge or on a social networking Internet website, as long as the source of the message or advertisement is patently clear from the content or format of the message or advertisement

§ 106.143(10)(d), (e), Fla. Stat.

Here, you indicate that your friend will make the videos for use in your campaign at no cost to you, and then you will display the videos on your campaign website and social media. You do not mention whether it would cost anything to place the videos on your website or whether there is a cost to post content for public users. If you place your videos “at no cost on an Internet website for which there is no cost to post content for public users,” consistently with section 106.143(10)(d), or on social media consistently with section 106.143(10)(e), then no disclaimers are required under section 106.143. *See* § 106.143(10), Fla. Stat.

On the other hand, if your situation does not meet any of the exceptions in section 106.143(10), and assuming your situation falls within the parameters of section 106.143(1)(c), you

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would need to include the three disclaimer items mentioned in section 106.143(1)(c).³ The second required item is the name and address of the persons paying for the advertisement; therefore, if there are any costs to your friend in creating the videos, your friend's name and address would need to be included in the disclaimer. *See id.*

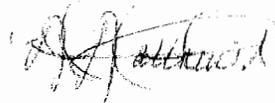
Issue 2: Whether your disclaimers must be written.

Your third and fourth questions ask about the form of the required disclaimers, assuming your advertisements do require disclaimers as discussed in issue one above. Again, assuming your situation fits within the parameters of section 106.143(1)(c), that provision does require the advertisement to be "marked" with the disclaimer. Thus, a written disclaimer is required. Also, the disclaimer must be "prominent." *See* § 106.143(1)(c), Fla. Stat.; *Div. of Elections Op.* 16-08 (June 16, 2016).

SUMMARY

Florida law generally requires disclaimers on political advertisements that are provided as in-kind contributions to candidates. However, if a political advertisement meets one of the exceptions in section 106.143(10), Florida Statutes, it does not need a disclaimer. If a disclaimer under section 106.143(1)(c) is required, the advertisement must be "marked" with a written disclaimer.

Respectfully,



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

³ This analysis assumes at the outset that your videos are "political advertisements" as defined in Florida law. *See* § 106.011(15), Fla. Stat.