



FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

January 16, 2018

The Honorable Chris Vincent
Town Commissioner
254 Corsair Avenue
Lauderdale-By-The-Sea, Florida 33308

Re: DE 18-03 Advertising – Use of Current
Office Title in Political Ads for Another
Office – §§ 104.31 and 106.143, Florida
Statutes

Dear Commissioner Vincent:

This letter responds to your request for an advisory opinion regarding the use of your office title, “Commissioner,” in your anticipated political advertising. As a candidate who proposes to advertise for election, the Division of Elections is authorized to issue an opinion to you pursuant to section 106.23(2), Florida Statutes (2017).

FACTS

Your request for an advisory opinion reflects that you currently are a town commissioner and you will be running for the office of Mayor, Lauderdale-By-The-Sea, in the March 2018 municipal election. You will remain in office as Town Commissioner until your successor takes office after the election. You ask if you may use your current title as “Commissioner Chris Vincent” when signing solicitations for campaign contributions and also use your “Commissioner” title on political signs, advertising, handouts, *etc.*” You state that you will not be using any town provided materials, such as letterheads or other official documents in your campaign.

ANALYSIS

Pertinent to your inquiry, section 104.31(1)(a), Florida Statutes (2017), provides that no municipal officer shall “[u]se his or her official authority or influence for the purpose of interfering with an election ... or influencing another’s person’s vote or affect the result thereof.” However, the same statute later indicates that paragraph (a) shall not be construed to limit the political activity

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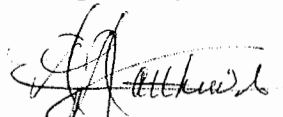
of an elected official or candidates for public office in any election. (*See* flush left paragraph after s. 104.31(1)(c), Fla. Stat. (2017).) Thus, as a current town commissioner, you are not limited by section 104.31 in your political activity with regards to seeking the office of town mayor. However, your political advertising must comply with the restrictions contained in chapter 106, Florida Statutes. For example, since you are seeking a different office than the one you presently occupy, you must not use the word “re-elect” and you must insert the word “for” between your name and the office you are seeking in your political advertisements. § 106.143(6), Fla. Stat. (2017). These limitations exist to preclude giving the voters an impression that you are an incumbent to the office you are seeking. Other than the limitations contained in section 106.143(6) and the prohibitions contained in sections 104.271¹ and 104.2715,² Fla. Stat. (2017), Florida’s Election Code governs the disclaimers to be on a candidate’s political advertising, not the actual content of the text within the body of a political advertisement.

Finally, we posit that an individual who is elected to an office typically gains, and is entitled to, a title that identifies the elected office, *e.g.*, Governor, Senator, Representative, or in your case, Commissioner. Therefore, we conclude the Election Code does not prohibit using your office title and referring to yourself as “Commissioner Chris Vincent” in political advertising and in signing campaign contribution requests when you are a candidate for mayor while still holding the office of Town Commissioner; thus, we see no issue with the sample verbiage you gave in your request, *i.e.*, “Elect Commissioner Chris Vincent for Mayor.”³

SUMMARY

The Florida Election Code does not prohibit an elected official using his or her current office title and referring to him or her by that office title in political advertising and other political activity while a candidate for another office if the elected official still occupies the current office. However, the political advertisements by such a candidate must not give the impression of incumbency to the office being sought.

Respectfully,



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

¹ Section 104.271, Fla. Stat. (2017), prohibits false or malicious charges against, or false statements about, opposing candidates.

² Section 104.2715, Fla. Stat. (2017), prohibits false representations of one’s military service.

³ As the Attorney General noted in interpreting section 104.31(1), Florida Statutes: “The mere use of an official title in political advertisements or other political-related writings falls within the realm of “political activity” and is not within the scope of activities prohibited by s. 104.31(1)(a).” Op. Att’y Gen. Fla. 78-133 (1978).