INQ 15-244 Welsh

Mr. Welsh:

You have inquired regarding whether you as an elected official may express an opinion in writing on written materials funded by yourself, under Section 106.113(3), Florida Statutes. The latter statute prohibits local governments from expending public funds on for political advertisements or electioneering communications regarding matters subject to the vote of the electorate. It is my opinion that the statute does not restrict any individual, including an elected City official, from expending his or her own personal funds for such purposes. Obviously, when this is done in connection with the elected official's own political campaign, the expenditure, disclosure and reporting requirements of Chapter 106 for candidates would have to be adhered to. However, on other election matters unrelated to your own election, it is my opinion that Section 106.113(3) would not create a prohibition for you to act as an individual expending your own resources for such purposes. Nonetheless, such independent expenditures would still be governed by all applicable provisions of Chapter 106, Florida Statutes, including Section 106.071.

Please be aware, however, that this agency does not have authority to issue binding opinions concerning the interpretation of State of Florida statutes or to enforce such statutes. Should you seek a definitive and binding opinion concerning the interpretation of any State statute regarding elections, you should request such opinion from the Division of Elections of the Florida Department of State.

Sincerely,

Joe Centorino

Joseph M. Centorino
Executive Director and General Counsel
Miami-Dade Commission on Ethics and Public Trust
19 W. Flagler Street, Suite 820
Miami, FL 33130
Tel: (305) 579-2594
Fax: (305) 579-0273
ethics.miamidade.gov

From: Welsh, Bob [mailto:BWelsh@southmiamifl.gov]
Sent: Monday, November 02, 2015 11:36 AM
To: Ethics (COE) <ethics@miamidade.gov>
Cc: Pepe, Thomas F. <TPepe@southmiamifl.gov>; Steven J. Alexander <SAlexander@southmiamifl.gov>
Subject: Request for Opinion

In 106.113 (3) does "express an opinion" give an elected official the right to express the opinion in writing, i.e. flyers if the flyers are funded solely by that elected official? Thank you, Bob Welsh

Subject: State prohibition on use of public funds to influence a referendum

106.113 Expenditures by local governments.—

(1) As used in this section, the term:

(a) "Local government" means:

1. A county, municipality, school district, or other political subdivision in this state; and

2. Any department, agency, board, bureau, district, commission, authority, or similar body of a county, municipality, school district, or other political subdivision of this state.

(b) "Public funds" means all moneys under the jurisdiction or control of the local government.

(2) A local government or a person acting on behalf of local government

2

may not expend or authorize the expenditure of, and a person or group may not accept, public funds for a political advertisement or electioneering communication concerning an issue, referendum, or amendment, including any state question, that is subject to a vote of the electors. This subsection does not apply to an electioneering communication from a local government or a person acting on behalf of a local government which is limited to factual information.

(3) With the exception of the prohibitions specified in subsection (2), this section does not preclude an elected official of the local government from expressing an opinion on any issue at any time.

History.—s. 1, ch. 2009-125.