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April 30, 2003

The Honorable Jimmy L. Morales
Stearns Weaver Miller et.al
150 West Flagler Street
Miami, FL 33130

RE: REQUEST FOR ADVISORY OPINION 03-58

Dear Commissioner Morales:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on April 29, 2003 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding the application of campaign financing legislation to contributions from political parties in non-partisan mayoral races.

In your request, you advised the Commission that the Florida Division of Elections recently issued Advisory Opinion 03-02 entitled "Activities of Political Parties Relating to Candidates for Nonpartisan Municipal Office". The advisory opinion addresses the questions of whether political parties may make a "three-pack expenditure" under Florida law and the respective reporting responsibilities of the political party and the candidate regarding any such expenditure.¹ The opinion also addresses the

¹ §106.021(3), F.S. defines a three pack expenditure. §106.021, F.S. provides that "expenditures may be made directly by any political committee or political party regulated by Chapter 103 for obtaining time, space or services in or by any communications medium for the purpose of jointly endorsing three or more candidates, and any such expenditure shall not be considered a contribution or

right of political parties to make an independent expenditure for nonpartisan mayoral candidates. The Division of Elections found that political parties may make "three-pack expenditures" on behalf of non-partisan mayoral candidates. The Division of Elections found that the political party would have to report the expenditure but the candidate would not have reporting responsibilities. The Division of Elections also opined that a party may make an independent expenditure for a non-partisan mayoral candidate.

The Code of Miami-Dade County is more restrictive regarding campaign contributions than state law. Sections 2-11.1.3, 12-5 and 12-22 of the Code Of Miami-Dade County restrict campaign contributions and expenditures by local candidates. Section 2-11.1.3 provides that "it is unlawful for any person or political committee, as provided in Section 12-5 to make a contribution or expenditure in excess of two hundred and fifty dollars(\$250.00) either directly, indirectly or through a political committee to any candidate for election to the Office of Mayor of Miami-Dade County, Miami-Dade County Board of County Commissioners, Miami-Dade County Community Council or the Miami-Dade County Fire Board. Section 12-5 of the Code of Miami-Dade County makes it "unlawful for any national or state bank or any corporation incorporated under the laws of the State of Florida or any other state or any foreign country or any unincorporated association to make a contribution or expenditure in connection with the election of any candidate in Miami-Dade County. Further it shall be unlawful for any candidate, political committee or other person to knowingly accept or receive any contribution prohibited by this section or for any officer or any director of any corporation, bank or unincorporated

expenditure to or on behalf of any such candidates for the purposes of this chapter."

association prohibited by this section." Section 12-22 provides for public financing of campaigns. Section 12-22 provides that mayoral candidates must receive at least one thousand contributions between fifteen dollars and two hundred and fifty dollars to be eligible for public financing. Further, the candidates must restrict his or her total expenditures during the local election to six hundred thousand (\$600,000) dollars.

The three ordinances provide that "contribution" and "expenditure" shall have the same meaning as under state law. §106.011, F.S. defines a contribution as (a) a gift, subscription, conveyance, deposit, loan, payment or distribution of money or anything of value, including contributions in kind having an attributable monetary value in any form, made for the purpose of influencing the election.; (b) a transfer of funds between political committees, between committees of continuous existence or between a political committee and a committee of continuous existence and (c) the payment, by any person other than a candidate or political committee of compensation for the personal services of another person which are rendered to a candidate or political committee without charge to the candidate or committee for such services and (d) the transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit and the term includes any interest earned on such account or certificate. Expenditure means a "purchase, payment, distribution, loan, advance, transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit or gift of money or anything of value made for the purpose of influencing the results of an election. " Further, §106.021, F. S. states that three-pack expenditures are

not considered contributions or expenditures for the purpose of this chapter.

The term political committee is not defined under the ordinances but state law provides that political committees do not include national political parties or the state and county executive committees of national parties.

The Commission found that a non-partisan mayoral candidate in Miami-Dade County is permitted to accept a three-pack expenditure from a political party and a political party may make an independent expenditure for the candidate. The Miami-Dade County code provides that the definition of contribution and expenditure are the same as under state law and three-pack expenditures are not candidate expenditures for purposes of state law. Therefore, three-pack expenditures are not regulated by local campaign financing ordinances regarding contributions and expenditures. Accordingly, state law governs and three-pack expenditures are permissible. The reporting responsibility is the same as mandated by state law.

Further, a political party may make an independent expenditure on behalf of a mayoral candidate. An independent expenditure is defined under state law as "an expenditure for the purpose of advocating the election or defeat of a candidate or the approval or rejection of an issue, which expenditure is not controlled by, coordinated with or made upon consultation with any candidate, political committee or agent of such candidate or committee. §106.11(5)(a), F.S. Any expenditure which is made in consultation or coordination with the candidate is not considered an independent expenditure. §106.11(5)(a), F.S. (2003).

Sections 2-11.1.3 and 12-5 restrict campaign contributions and expenditures on behalf of a mayoral candidate by certain entities

including corporations and political committees. However, Sections 2-11.1.3 and 12-5 of the Code do not regulate independent expenditures by political parties. Since political party expenditures are not regulated by county ordinance and they are permissible under state law, a political party may make an independent expenditure on behalf of a mayoral candidate.²

Moreover, Section 12-22's cap on expenditures does not extend to independent expenditures by a political party. Since the law requires that expenditures may not be coordinated with or controlled by a candidate, the expenditures are not candidate expenditures and may not be considered within the total expenditures made by the candidate.

Therefore, a political party may make a three-pack expenditure on behalf of a mayoral candidate and a political party may make an independent expenditure for a mayoral candidate.

If you have any questions regarding this opinion, please call Ardyth Walker, Staff General Counsel at (305) 350-0616 or the undersigned at (305) 579-2594.

Sincerely Yours,



ROBERT MEYERS
Executive Director

² The U.S. Supreme Court has held that the First Amendment prohibits restrictions on independent expenditures by political parties. However, any expenditure that is controlled by or coordinated with the candidate is not an independent expenditure and the amount of such expenditures may be restricted and considered an expenditure by the candidate's campaign. See Federal Election Commission v. Colorado Republican Federal Campaign Committee, 533 U.S. 431 (2001).