

073-334—September 10, 1973

ELECTIONS

RATES FOR POLITICAL ADVERTISING

To: Gary Cunningham, Representative, 30th District, New Smyrna Beach

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTIONS:

1. What is the meaning of the word "otherwise" in §16 of Ch. 73-128, Laws of Florida [§106.16, F. S.], relating to charges for political advertising and political broadcasts?
2. May a statute constitutionally require political advertising to be provided at a price lower than the lowest commercial rate?
3. What is the meaning of the prohibition against charging one political candidate a "higher rate" than another political candidate?

SUMMARY:

Under Chapter 73-128, Laws of Florida, political advertisers are entitled to the lowest local rate that would ordinarily be given to commercial advertisers based on maximum frequency discounts, bulk discounts, and advertising packages, including any cash discounts allowed. If a more favorable rate below this ceiling is given to a particular political advertiser, the same rate must be given to other candidates for the same amount of advertising.

AS TO QUESTION 1:

Section 33 of the Charter Act of the City of Daytona Beach (Ch. 69-991, Laws of Florida) adopts the general laws of this state relating to elections as a part thereof, except where inconsistent or in conflict therewith; and it is assumed for the purpose of this opinion that §16 of Ch. 73-128, *supra* [§106.16, F. S.], is applicable to the upcoming city elections.

Section 16 of Ch. 73-128, *supra* [formerly §104.372, F. S., (1972 Supp.)], prohibits newspapers or other news media from charging a candidate for state or county office for political advertising or broadcasting "a rate in excess of the lowest local rate available to advertisers otherwise qualifying for maximum frequency discounts, bulk discounts and advertising packages, including any cash discounts allowed." Prior to the 1973 amendment, and as amended in 1972 by Ch. 72-106, Laws of Florida, the statutory prohibition read as follows: ". . . a rate in excess of the regular local rate regularly charged by such person or corporation for commercial advertising or broadcasts." The title to the 1972 amendatory act stated that the purpose of the 1972 amendment was to provide that the rate should not exceed "any rate regularly charged by the advertiser or broadcaster for commercial advertising or broadcasts of any character." (Emphasis supplied.) And I ruled in AGO 072-234 that the legislative intent was that

. . . a political advertisement should be run by a newspaper at the lowest possible rate regularly charged its commercial advertisers without regard to whether a political ad would have the characteristics of and be similar to a "transient" or other type of retail advertisement that would ordinarily carry a higher rate than other types of commercial advertising.

One of the meanings given by Webster to the word "otherwise" is "in different circumstances." And it seems clear that the 1973 amendment was intended to clarify the fact that political advertisers are entitled to the benefit of the maximum discounts—and, consequently, to the "lowest local rate"—that would ordinarily be given to commercial advertisers in these circumstances: "for maximum frequency

discounts, bulk discounts and advertising packages, including any cash discounts allowed."

AS TO QUESTION 2:

You state that there may be special rates available to religious, charitable, civic, and eleemosynary organizations and inquire whether the statute may validly require the advertising media to provide political advertising at a rate lower than the lowest commercial rate.

This office, as a matter of public policy of long standing, does not ordinarily comment on the validity of a statute, as to do so would be an unwarranted intrusion into the province of the judiciary. However, I do not understand that the legislature intended to give to political advertisers the benefit of any special rate that a newspaper or other type of news media might, either routinely or in a special case, give to a charitable or other similar organization. The discounts referred to in the statute are those ordinarily given to commercial advertisers who regularly carry advertisements in newspapers or other news media; and there is nothing in the statute that either expressly or by necessary implication indicates that the legislature intended to give to political advertisers the benefit of a special rate given to a charitable or other similar organization.

AS TO QUESTION 3:

The provision referred to in this question prohibits newspapers or other news media from charging "one political candidate in a county a higher rate than another political candidate." It was added to §104.372, *supra*, by Ch. 61-265, Laws of Florida, and was unchanged by the 1972 and 1973 amendments to the section referred to above. It was apparently intended to prohibit the news media from adjusting their rates for political advertisements so as to discriminate in favor of candidates whose candidacies they supported and against those whose candidacies they opposed. As noted above, under the 1972 and 1973 amendments to the statute, all candidates are entitled to the benefit of the lowest local rate that could be charged to commercial customers in any of the circumstances described in the statute. Below this ceiling, newspapers and other news media apparently have some discretion insofar as the rates for political advertisements are concerned. However, under the provision here in question, there can be no discrimination between candidates whose advertising needs are the same.

073-335—September 12, 1973

ANTINEPOTISM LAW

APPLICABLE TO PARK BOARD; BOARD MAY NOT TAKE ACTION
IN CONTRAVENTION OF LAW EVEN IF RELATED
BOARD MEMBER ABSTAINS FROM VOTING

To: *Raymond E. Thompson, Park Board Attorney, Hollywood*

Prepared by: *Sharyn Smith, Assistant Attorney General*

QUESTIONS:

1. Is the Topeekeegee Yugnee Park Commission an agency within the meaning of the Antinepotism Law, §116.111, F. S.?
2. May the brother-in-law of a member of the Topeekeegee Yugnee Park Commission be employed as park administrator by the commission if the related member of the commission abstains from voting on such employment?

SUMMARY:

The Topeekeegee Yugnee Park District is an "agency" within the