

April 23, 1992

Mr. William Miller  
811 Indiana  
Coeur d'Alene, ID 83814

**THIS CORRESPONDENCE IS A GUIDELINE OF THE  
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE**

Dear Mr. Miller:

You have requested an opinion from this office regarding advertisements you placed in a local newspaper promoting your name and the applicability of Idaho's campaign finance disclosure laws as applied to county officials. Chapter 66, title 67, Idaho Code, and Idaho Code § 31-2012. According to your letter, at the time of the events in question you were not a declared candidate for the office of Kootenai County Sheriff. You also state in your letter that you had personally decided to seek the position. During November and December, 1991, you took out several advertisements in the local newspaper expressing messages such as "Bill Miller wishes you, your family and friends a Happy Thanksgiving." These ads made no mention of your political intentions nor linked you to any campaign. Nonetheless, the question has arisen whether your conduct in placing these ads violated Idaho's "sunshine" laws.

As of July 1, 1991, all candidates seeking election to county office must comply with Idaho's campaign disclosure laws. Idaho Code § 31-2012. Two code sections need to be considered in relation to your questions. Idaho Code § 67-6614A requires any person making an expenditure "for the purpose of financing communications expressly advocating the election or defeat of a candidate through any broadcasting station, newspaper, magazine, or advertising facility, direct mailing, or any other type of general public political advertising to clearly identify in the communication the person responsible for the communication." (Emphasis added.) This section was not violated by your advertisements since they were not expressly advocating your election to any office.

A more difficult question is raised by Idaho Code § 67-6603(c) which provides in pertinent part:

No contribution shall be received or expenditure made by or on behalf of a candidate or political committee:

(1) until the candidate or political committee appoints a political treasurer and certifies the name and address of the political treasurer to the [clerk of the district court].

In this regard, the critical determination is whether you were a "candidate" for office at the time the advertisements ran. For purposes of ch. 66, title 67, Idaho Code, the term "candidate" is defined:

"Candidate" means an individual who has taken affirmative action to seek nomination or election to public office. An individual shall be deemed to have taken affirmative action to seek such nomination or election to public office when he first:

- (1) Receives contributions or makes expenditures or reserves space or facilities with intent to promote his candidacy for office; or
- (2) Announces publicly or files for office.

Idaho Code § 67-6602(a).

Short of an announcement or clear statement of intent, determining whether a person is a candidate is a difficult task, particularly for the "potential candidate." In Attorney General Opinion No. 77-29, this office noted this difficulty:

In many cases there may be a fine line between assessment of a potential candidacy and promotion of an existing candidacy. The determination of a person's purpose is a question of fact which must be determined from the surrounding circumstances. Normally, it should be possible to determine whether a person is a "candidate" from the substance and the extent of his communications. By inquiring as to the substance of the potential candidate's communications it should be possible to determine if the candidate is primarily soliciting advice or is primarily soliciting campaign staff or financing. Similarly, whether one is a "candidate" can normally be determined by the extent of his communications.

(Emphasis added.) Attorney General Opinion No. 77-29 concluded that expenditures made travelling throughout the state to assess the prospects of a candidacy did not make the person a "candidate" necessitating the appointment of a campaign treasurer.

Attorney General Opinion No. 77-29 points out that the proper determination whether a person is a candidate can be made by evaluating "the substance and the extent of his communications." This approach avoids subjective determinations. The determination of candidacy for purposes of enforcing ch. 66, title 67, Idaho Code, is made objectively from an observer's perspective. Essentially, could a reader or listener

determine from the message that a candidacy for office was being promoted from the substance or extent of the communication?

In this instance, it appears that the messages did not objectively promote a candidacy, and the advertisements were not coupled with an expressed intent to run for office. Furthermore, from your letter you indicate that you did not make any public statements or speeches regarding your intentions to run for office during the period when the advertisements appeared in the paper. You were obviously promoting your name, but to what end was not clear. At that time you could have decided to forego the race or run for a different office. To be required to appoint a treasurer for an inchoate campaign seems futile. Therefore, in our opinion, no violation of the law occurred. We recognize the likelihood that these particular advertisements were placed with some political motivation. Nonetheless, until the substance of the message can be objectively linked to a political campaign for a particular office or measure, compliance with ch. 66, title 67, Idaho Code, is not required. If this were not the case, every person who placed an advertisement in the newspaper could be subjectively scrutinized for an improper and unlawful political intention.

If I may be of further assistance to you in this matter, please do not hesitate to contact me.

Yours very truly,

FRANCIS P. WALKER  
Deputy Attorney General