

Know disclaimer rules for political advertising



Discounted rate is reportable contribution

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In just about one more month, the fall elections will be over, which means the next 30 days will be busy ones for the MPA hotline. Campaign advertising in print, like the ads you see on television, continue to push the envelope in terms of the allegations made and materials used from other sources.

The advertising on the stem cell ballot issue, in particular, is likely to generate much controversy this month as the debate gets intense. Don't hesitate to call if you have concerns over any ads you receive.

There have already been several calls to the hotline this fall from publishers regarding whether special rates could be offered to one side or the other in a ballot-issue campaign or if both sides must be charged the same rate.

A publisher may choose to offer a discount to a favored side in a political campaign, whether a candidate or an issue, BUT the discount that is given must be counted by the political campaign as a contribution to that campaign by the newspaper, and must be included in the campaign's finance disclosure reports to the Missouri Ethics Commission.

The paper would be subject for these in-kind contributions to the donation limits imposed on corporate entities just as if they had made a cash contribution to the campaign.

In addition, the ads must contain the same kind of attribution in issue campaigns as is required in candidate advertising. Ads must say "Paid for by" followed by the name of the candidate, the committee (and its treasurer), or the corporate entity paying for the ad. If a group of individuals is paying for the ads, their names and addresses must be listed.

Those who pay for advertising for issues or candidates are required to file reports with the state Ethics Commission if they accept donations to cover some of those expenses, just as campaign committees are required to track and report contributions.

Thus, if a newspaper decides to run ads for an issue campaign for no charge, either it would need to be identified on a finance committee's list as a donor, or it would be required to register as its own campaign finance committee and to report on its expenditures, listing itself as the sole donor.

Federal law, which governs campaign ads for federal campaigns (ie: the U.S. Senate campaign), requires that no person can charge any amount for space that exceeds the amount charged for comparable use of space for other purposes. In other words, you cannot charge more for space just because it's being sold to a political campaign.

There are similar requirements for attribution in federal campaign advertising and the requirement that the ad must state it is either authorized by the candidate or not authorized by the candidate but authorized by the advertiser.

The campaign finance laws are quite detailed and contain precise reporting deadlines, so if you choose to form a campaign finance committee, you will probably require legal assistance to meet these requirements. There are penalties for failing to meet reporting requirements.

Meanwhile, let me emphasize again that each of you needs to warn your advertising staff to be attentive to the need for the attribution line in each ad. Just last April, a 2-column-by-4-inch box ad ran in the Kansas City Star noting that an ad had run without proper attribution and citing the entity that had paid for the ad, so know that

this error can creep in on anyone.

But running a correction may not be sufficient to cover a paper's failure to include such an attribution. One newspaper in the state is fighting a claim by the Ethics Commission that no attribution was included in an ad that ran in that paper. This case is still in its early stages so we cannot know what the ultimate result will be.

But in 1995, the U.S. Supreme Court held that requiring attribution in a political ad was a violation of a citizen's First Amendment rights of speech in a case that came to it from Ohio. There are similarities in Ohio's law to Missouri's law, and an argument can be made that the same First Amendment principles make it unconstitutional for the Ethics Commission to penalize a Missouri paper for its failure to properly list attributions in a political ad.

It is possible that the ultimate outcome of this litigation will be the end of the risk to Missouri newspapers for liability in such situations. We'll keep you informed as this case progresses.