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Candidates in same group get equal advertising rates

Can officials muzzle other officials?

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As we head into the thick of campaign season, political advertising will increase. We have talked in the past about the attribution required by state law in ads placed by candidates, and now is a good time for newspapers to remind their advertising departments again that such ads need to have proper attribution to the campaign which has placed the ad.

However, another issue that sometimes arises is the cost of the advertising for a candidate. What you as a newspaper charge to a candidate for the advertising that is placed in your newspaper is also subject to scrutiny by the Missouri Ethics Commission, the state agency charged with monitoring matters relating to political campaigns and candidates.

The policy of the commission, according to Joe Carroll, campaign finance director for the commission, is that all candidates in the same category must get the same rate. If a candidate is given a more favorable rate than another similarly situated candidate, then the benefit of the lower rate is viewed as a contribution to the candidate being favored. In other words, the candidate would need to report as a campaign contribution the discount that was received from the newspaper for the advertising that was placed.

For example, a newspaper may set one rate schedule for candidates for statewide offices, a higher schedule for candidates of national races, and a lower rate schedule for regional or local candidates. Discounts may be given for frequency of ads or placement or other factors to all candidates within that category.

Occasionally, a newspaper in a smaller community will call to ask if a candidate who also owns a business in the community can use the rates that the business has contracted for placing its ads to place a campaign ad instead of a business ad, usually because the rates given the business are lower than the rates offered for the campaign ad.

Mr. Carroll advises that this is permissible, but the commission will view that as a contribution from the business to the campaign and it would need to be properly reported by the candidate on his or her campaign finance report.

If your newspaper hasn't set up a rate structure for the variety of campaign ads you receive, perhaps now is a good time to look into that, if not for the August primary, then before the campaigns get under way for the November general election.

If anyone needs help knowing what is required in terms of the attribution on each ad, please give me a call on the hotline and I'll be glad to provide that information to you.

On another subject, in recent years there have been frequent calls to the hotline regarding cities that have established ordinances mandating that elected officials may not disclose to the public any information which was obtained in a closed meeting, seeking to impose penalties for such actions.

I have always believed that such a rule is a violation of one's First Amendment right of freedom of speech. The sunshine law is clear that closure is a privilege, not a mandated requirement, and therefore I have always argued that it is up to the members of the body individually to determine to what extent they choose to honor the closure and confidence that comes with closed meetings.

I do not see any reason to change that opinion, but the U.S. Supreme Court recently issued an opinion that raises some interesting questions in regard to how that provision might be applied to employees of the public

governmental body.

The opinion is in the case of Garcetti v. Ceballos, issued on May 30, 2006. The case is not a sunshine law case. It arises from a situation where a deputy district attorney wrote a memo critical of the actions of law enforcement. The district attorney later claimed he was terminated for writing the critical memo in the course of his job duties.

The court held that there were clear differences between the rights of a citizen and the rights of an employee. "A government entity has broader discretion to restrict speech when it acts in its role as employer, but the restrictions it imposes must be directed at speech that has some potential to affect the entity's operations."

Governmental entities have control over employees' speech to ensure efficient providing of public service, the court held. Because such employees hold trusted positions in society, "when they speak out, they can express views that contravene governmental policies or impair the proper performance of governmental functions."

Of greatest importance to the court was that the employee made his statements pursuant to his duties. He was not speaking as a citizen, but as an employee, the court found, and therefore the employer had a right to control the statements of the employee.

Therefore, it would seem that a city or county may indeed be able to implement a policy that its employees are subject to termination for making statements which disclose matters that would otherwise be closed records. It's an interesting limitation on First Amendment freedoms, but also would appear to leave untouched the premise that since members of the public body are not employees, their First Amendment rights cannot be so limited.

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