Elections; political advertisements (file with ... of same subject)
21 MRSA 1394

STATE OF MAINE

Inter-Departmental Memorandum Date October 20, 1976

To Markham L. Gartley, Secretary of State Dept. State

From Donald G. Alexander, Deputy Dept. Attorney General

Subject Announcements of Sources of Advertisements Pursuant to 21 M.R.S.A. § 1394

The memorandum represents a revision of the opinion on the above subject dated October 13, 1976.

FACTS:

Title 21 M.R.S.A. § 1394 prohibits broadcasters of political or referendum campaign advertisements from broadcasting "any such communication without announcing the name of the person who made or financed the expenditure for the communication." In the course of the current campaign, representatives of the Secretary of State's Office observed a number of televised political advertisements which included a written statement of the source of sponsorship but did not include an oral statement of that source. Accordingly, on September 30, 1976, the Secretary of State's Office issued an interpretation of § 1394 stating that an oral announcement of the source of financing for political communications broadcast on television is required. On that same date, the Secretary of State's Office requested this office's interpretation of the law on this matter. This office responded by opinion dated October 13, 1976, which confirmed the interpretation of the Secretary of State that the "announcing" terminology in 21 M.R.S.A. § 1394 required an oral statement of the source of payment for political advertising in television communications. Subsequent to the issuance of that opinion, this office and the Secretary of State's Office received many expressions of concern at that interpretation from both political candidates and the broadcasting industry. These expressions of concern indicated that much time for advertising had already been contracted for and that the advertisements intended to be placed in those time slots had already been produced. To add oral statements on the end, it was suggested, would require revisions of time allotments already made or revisions in the political advertisements themselves. It was further pointed out that the political advertisements had been produced and the time contracted on the assumption that the identification announcements could be visual because such had been the consistent interpretation of the Federal Communications Co-mission in interpreting similar provisions of federal law. It was asserted that reliance on the prior consistent interpretation of the Federal Communications Commission and the change from that position to require an oral announcement at this late date could place severe financial burdens on candidates who had already produced advertisements and could cause many technical problems for the television stations

involved in adding time to make the announcements or otherwise revising the political ads - a type of "censorship" not allowed by the Federal Communications Commission. In this connection, one television station, WGAN, provided an extensive legal memorandum in addition to discussing the problems of implementation of the "oral statement" requirement with the staff of the Secretary of State and the Attorney General. Based on the problems indicated in these communications, from candidates and the broadcast community, this office undertook a re-examination of its position of October 13. Based on that examination we believe that a revision of the opinion is appropriate.

QUESTION:

How should the "announcing" terminology in 21 M.R.S.A. § 1394 ¶4 be interpreted?

ANSWER:

As to television stations, the announcing terminology in 21 M.R.S.A. § 1394 ¶ 4 should be interpreted to allow use of either visual or oral announcements to meet the requirements provided those announcements are sufficiently clear, in size and in sound, to identify the source of payment for the advertisement.

DISCUSSION:

The terminology in 21 M.R.S.A. § 1394 relating to announcing is similar to terminology in the applicable federal statute requiring disclosure of the source of payment for political advertisements. Thus, 47 U.S.C. § 317(a) provides:

> "(1) All matter broadcast by any radio station for which any money, service or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, . . . shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person . . . . "
>
> "(2) Nothing in this section shall preclude the Commission from requiring that an appropriate announcement shall be made at the time of the broadcast in the case of any political program or any program involving the discussion of any controversial issue for which any films, records,

> transcriptions, talent, scripts, or other material or service of any kind have been furnished, without charge or at a nominal charge, directly or indirectly, as an inducement to the broadcast of such program."

This provision applies to both radio and television stations. Cf. United States v. Midwest Radio-Television Inc., 249 F. Supp. 936 (D. Minn., 1966).

Section 317 itself is not determinative of the visual-oral question and has been recognized as somewhat vague, United States v. WHAS, Inc., 385 F.2d 784 (6th Cir., 1967). Further, this section has been subject to interpretation by regulation by the Federal Communications Commission, 47 C.F.R. § 73.1212. This regulation, like the statute, only uses the term "announce" in discussing required identification of sponsorship. It does not resolve the oral-visual questions. However, § 317 has been interpreted by the Federal Communications Commission for at least 13 years to allow stations to choose whether the announcement must be oral or visual in nature. Thus, the Federal Communications Commission in a decision: Applicability of Sponsorship Identification Rules, 40 F.C.C. 141 (1963) ruled as follows:

> "Must the required sponsorship announcement on television broadcasts be made by visual means in order for it to be an 'appropriate announcement' within the meaning of the Commission's Rules?
>
> "Not necessarily. The Commission's Rule does not contain any provision stating whether oral or visual or both types of announcements are required. The purpose of the Rule is to provide a full and fair disclosure of the facts of sponsorship, and responsibility for determining whether a visual or oral announcement is appropriate lies with the licensee. (See Commission telegram to Mr. Bert Combs, FCC Public Notice of April 9, 1959. Mimeo No. 71945.)" 40 F.C.C. 150-151.

It is this interpretation of the term "announce" which has formed a consistent basis for practice in the industry and on which candidates and broadcasting stations in Maine have relied.

In interpreting Maine statutes, it is appropriate to look to other similar statutes as a guide for interpretation. Inhabitants of Town of Amity v. Inhabitants of Town of Orient, 153 Me. 29 (1957); Cram v. Inhabitants of Cumberland County, 148 Me. 515 (1953). Here particularly, it is appropriate to look to federal law and practice of long standing interpreting a similar term in a similar statutory requirement. That interpretation has allowed the stations themselves to require either a visual or an oral statement of the source of political advertising in television commercials. In light of that long history, it is appropriate to assume that the legislature contemplated a similar interpretation in Maine statutes, although the legislature used a different term "state" in speaking of visual identification of the source of political advertising within the same section. It is recognized, as the October 13 opinion noted, that this interpretation results in the term "announcing" being used two different ways when applied to the two different segments of the broadcast media, radio and television. However, as such has been the long interpretation of the federal agency regulating the broadcast media, it is an acceptable basis for use in interpreting Maine statutes.

As a final note: it must be emphasized that this opinion should not be construed as holding that federal regulations in this area totally pre-empt the state's ability to regulate. No opinion is expressed on the question of what might happen should the legislature amend § 1394 to clearly specify that oral statements at the end of the political advertisements are required. The law confirming the authority of the Federal Communications Commission limits its extension of authority to "all interstate and foreign communication by wire or radio." 47 U.S.C. § 152. Whether a television advertisement prepared solely for a Maine election and broadcast on a station in Portland or Bangor or elsewhere in Maine, is an interstate communication would be subject to serious question. Further, as there is no contrary provision in federal statute but simply a decision of the Federal Communications Commission which the Commission has not seen fit to raise to the regulation level, it is doubtful that there would be any inconsistency with federal regulation such as would give rise to a claim of inconsistency and federal pre-emption by persons who might resist the oral statement requirement.

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