Election Advertising requirements

21 MRSA § 1394

JOSEPH E. BRENNAN
ATTORNEY GENERAL

RICHARD S. COHEN
JOHN M. R. PATERSON
DONALD G. ALEXANDER
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE

DEPARTMENT OF THE ATTORNEY GENERAL

AUGUSTA, MAINE 04333

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To: James M. Bowie, Assistant to Commission on Governmental Ethics and Election Practices

From: Donald G. Alexander, Deputy Attorney General

Re: Interpretation of 21 M.R.S.A. § 1394

This responds to your memorandum of December 15, 1977, in which you posed several questions regarding interpretation of 21 M.R.S.A. § 1394.

1. Does 21 M.R.S.A. § 1394 apply to campaign buttons: The former law relating to identification of political advertisements, 21 M.R.S.A. § 1575 (1964 ed.), required designation of the source of all written or oral political advertisements. By an opinion of this office dated March 25, 1966, it is stated that this law generally applied to political advertisements and novely items, thus including buttons. However, that opinion itself fashioned the so-called "six inch square exemption" exempting from coverage documents, novelty items and buttons less than six inches square. Thus, up to now, buttons have been viewed as exempt.

21 M.R.S.A. § 1394 applies to communications expressly advocating the election or defeat of a clearly identified candidate through (a) broadcasting stations, newspapers, magazines, outdoor advertising facilities, direct mails, and other similar types of public political advertising, and (b) flyers, handbills, bumper stickers and other nonperiodical publications. Buttons are not specifically included within these categories. However, buttons would appear to serve the identical function as bumper stickers. Further, some buttons may be distributed through direct mail campaigns. Therefore, we believe that buttons do require an identifying statement. Obviously such a statement can be in a place and of a size which does not detract from the message of the button.

2. Is the six inch square rule, as discussed in the opinion of March 25, 1966, still applicable?

We answer this question in the negative. There is no limitation in 21 M.R.S.A. § 1394 for advertisements which are less than six inches square, nor do we think one can be presumed from either

the intent of the statute or the past history of construction of the law which has included a six inch square exemption. In fact, there may be a number of documents, for example cards sent as part of a direct mailing, that may be less than six inches square but would come within the specified definition.

3. In order to be in accordance with 21 M.R.S.A. § 1394, how detailed must be an address that is part of a political disclaimer?

We believe, that to be in reasonable compliance with the statute, an address must be sufficiently specific to convey the identity of the person or committee authorizing the expenditure in sufficient detail to avoid confusion and to permit a member of the public to make contact if they desire. Thus, it would be appropriate for the address to include the name, the street address, and the municipality. We emphasize, however, that the question of the extent of necessary identification will vary on a case-by-case basis. For example, it may be sufficient to include only the name of the city with the name of committees which include the name of the candidate.

4. 21 M.R.S.A. § 1394, ¶ 1, states that a political statement, "if authorized by a candidate, a candidate's authorized political committee or their agents, shall clearly and conspicuously state that the communication has been so authorized and shall clearly state the name and address of the person who made or financed the expenditure for the communication." Must, then, statements include terminology explicitly denoting authorization (for example, "authorized by") in addition to terminology explicitly denoting responsibility for financing (for example, "paid for by")?

It would be our view that the law requires the statement "authorized and paid for by" as the law uses the conjunctive "and," thus requiring terms explicitly indicating source of authorization and source of financing.

DONALD G. ALEXANDER
Deputy Attorney General

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