

Political Advertising Legal Guide for S.C. Newspapers

Political advertising, whether for or against a candidate or ballot measure, is subject to legal requirements not found in non-political advertising.

The requirements are concerned with:

- Disclosure of the sponsor of the advertising, and
- The rate charged for the advertising space.

In making a determination about which requirements must be met, you must first determine if the advertising relates to a federal candidate or a candidate seeking state or local office.

STATE RACES

State and Local Disclosure of Sponsorship

South Carolina law requires that the name and address of the sponsor of advertising supporting or opposing a public official, a candidate or a ballot measure must be included in the advertising. (S.C. Code sec. 8-13-1354)

Campaign practices in South Carolina are subject to enforcement by the state Ethics Commission. The Commission interprets the “name and address” requirement to mean that the person or committee paying for the advertising must be identified in such a fashion that someone could contact the sponsor by mail.

Suggestions: Place the sponsorship notice at the bottom of the ad in at least 8 pt. type. A sample disclosure: *“Paid for by Jane Doe, P.O. Box XXX, Columbia, S.C. 29202”*

Rates — State and Local Races

South Carolina law makes it a crime for a newspaper to charge an amount for political advertising in excess of the “local prevailing rate” for commercial advertising. The same statute also makes it a crime to establish different terms and conditions for payment for political advertising than for commercial advertising. (S.C. Code sec. 16-17-730)

Payment Suggestion: Treat the political candidate the same as you would treat a commercial advertiser in terms of rates and commissions. If a candidate purchases enough space to earn a bulk discount, give the discount. If the advertising is placed by an agency on a commission rate, give the commission. This does not mean you cannot require advance payment, just as you would for an itinerant advertiser.

FEDERAL RACES

Federal races include those for Congress, Senate and president and vice president.

Federal Disclosure of Sponsorship (2 U.S.C.A. sec. 441d)

The language of the disclosure statement to be included in the advertising for a candidate for federal office is controlled by the identity of the sponsor of the advertising and by whether or not the advertising was authorized by a candidate or the candidate's campaign committee. Three categories are identified in federal law:

1. Advertising sponsored by candidate or the candidate's authorized campaign committee;
2. Advertising sponsored by someone other than the candidate or candidate's committee and the advertising is authorized by the candidate or the candidate's committee; or,
3. Advertising that is not authorized by either the candidate, or the candidate's committee.

What disclosure is required?

1. If the advertising is paid for by the candidate or the candidate's committee, the disclosure statement in the advertising must state that the advertising has been paid for by the candidate or the candidate's committee. Sample wording: *"Paid for by Thurmond for Senate Committee."*
2. If the sponsor of the advertising is a person or committee other than the candidate and the advertising is authorized by the candidate or the candidate's committee, the disclosure must clearly identify the sponsor and state that the advertising has been authorized by the candidate or the candidate's committee. Sample wording: *"This ad is authorized by the candidate and paid for by the National Rifle Association."*
3. If the advertising is neither paid for nor authorized by a candidate or candidate's committee, the disclosure must clearly state the name of the person paying for the advertising and that the advertising is not authorized by the candidate or the candidate's committee. Sample wording: *"This ad is paid for by Herman Smith and is not authorized by the candidate."*

How is disclosure to be made?

The disclosure of sponsorship must be:

1. in a readable type size
2. contained in a printed box set apart from other content
3. be printed with reasonable color contrast from the background and text.

Rates — Federal Offices

A newspaper may charge a candidate for federal office, or the committee of a candidate for federal office, an amount that is no more than the charge for comparable space for other types of advertising. If a campaign purchases enough space to earn a volume discount if

the space were being purchased for non-political advertising, the campaign would be entitled to the volume discount.

OTHER ISSUES

Libel

Read every political ad for potential libel! Newspapers and candidates have been sued for libel in connection with political advertising. Broadcasters have immunity from libel claims in exchange for not being able to reject political advertising by qualified candidates. Since newspapers do not have the same immunity, a publisher should be aware that the publication of false statements of fact injurious to someone's reputation can result in a claim for damages if the publisher knew the information was false, or if the publisher had serious doubt about the accuracy of the statement and published in the face of those doubts. If you doubt the accuracy of a claim in a political advertisement, ask for substantiation or reject the copy. The SCPA libel hotline is available to assist in the screening of political advertising.

Since a political ad may contain libel, an element of your defense is: "I didn't doubt the accuracy of the statement." To be credible on this point you then need to be able to answer the next question about who placed that ad. When you take a political ad, you need to have the name of a real live human who placed it. You might also ask for and photocopy the ID of a person unknown to you. You may want to have language in your political advertising contract that indicates that the person placing the ad certifies that it is accurate, and that the sponsor of the ad will indemnify the paper if a claim is made for libel. If you are asked by another candidate to reveal additional information about who placed an ad, there is no obligation under law to go beyond what was printed in the advertisement.

Invasion of privacy

If an advertiser were to list a person's name in an advertisement indicating that the person had endorsed the product being advertised, and the person whose name was used had not consented to the use, the person whose name was used would have a claim for invasion of privacy. It is possible that a similar result would be reached if a person's name were included in a political endorsement ad without consent. To avoid invasion of privacy claims, the publisher should require a candidate or campaign to furnish a signed statement from each person whose name is to be included in an endorsement ad. If the candidate provides camera-ready copy, it is still a sound practice to require the signed statements. An alternate protection would be to ask the campaign manager to sign an affidavit that all of the names are being used with permission. As with libel, it may be helpful to have your contract specify that the sponsor of the ad will indemnify the paper against invasion of privacy claims.

Payment

It is legal and advisable to require payment in advance for political ads.

