

MEMORANDUM

TO: ELECTIONS BOARD MEMBERS

FROM: GEORGE A. DUNST, LEGAL COUNSEL

MEETING DATE: DECEMBER 10, 2003

SUBJECT: COMPLAINT OF KIM WARKENTIN AGAINST
MARK HONADEL AND FRIENDS El. Bd. CPT. 03-59

FACTS

On July 15, 2003, the complainant, Kimberly Warkentin, the Executive Director of the Democratic Party of Wisconsin, filed this complaint against Mark Honadel and his campaign committee, Honadel for Assembly. Mark Honadel was a candidate for the office of Representative to the Assembly for the 21st Assembly District at a special election held on July 22, 2003. The complaint alleges that the respondents failed to include the source identification required by s.11.30(2), Stats., on yard signs displayed throughout the 21st Assembly District. The complaint alleges as follows:

Kimberly Warkentin, as and for his verified complaint against Mark Honadel and Honadel for Assembly, alleges as follows:

- 1. Complainant Kimberly Warkentin is a resident of the State of Wisconsin and a qualified elector, residing at 3117 Stratton Way #205, Madison, Wisconsin, 53719,*
- 2. Respondent Mark Honadel, upon information and belief, is a resident of the State of Wisconsin who resides at 1219 Manitoba Ave - South Milwaukee, WI 53172.*
- 3. Honadel for Assembly is Honadel's personal campaign committee and is registered with the Elections Board. The address for the Honadel Committee is 1219 Manitoba Ave - South Milwaukee, WI 53172.*
- 4. Honadel and/or the Honadel Committee has distributed yard signs throughout Assembly district.*
- 5. The yard signs contain no attribution, disclaimer or other text indicating who or what had authorized or paid for the yard signs.*
- 6. Any payment for the yard signs was a "disbursement" as that term is defined in section 11.01(11) of the Statutes.*
- 7. Any agreement to pay for the yard signs was an "incurred obligation as that term is defined in section 11.01(11) of the Statutes.*

Anonymous Disbursement or Incurred Obligation

- 8. Complainant realleges and reincorporates paragraphs 1 through 7 of this Verified Complaint.*
- 9. Upon information and belief, the yard signs constituted an anonymous disbursement or incurred obligation by the Honadel Committee in violation of*

- section 11.30(1) of the Statutes, making the Honadel Committee liable for a forfeiture of up to \$500 pursuant to section 11.60(1) of the Statutes.
10. Upon information and belief, the yard signs constituted an anonymous disbursement or incurred obligation by Honadel in violation of section 11.30(1) of the Statutes, making Honadel liable for a forfeiture of up to \$500 pursuant to section 11.60(1) of the Statutes.
 11. Upon information and belief, the yard signs constituted an anonymous disbursement or incurred obligation by the Honadel Committee, and as such constituted an intention violation of section 11.30(1) of the Statutes, making the Honadel Committee liable for a fine of up to \$10,000 under sections 11.61(1)(b) or (c) of the Statutes.
 12. Upon information and belief, the yard signs constituted an anonymous disbursement or incurred obligation by Honadel, and as such constituted an intentional violation of section 11.30(1) of the Statutes, making Honadel liable for a fine of up to \$10,000 and imprisonment of up to 30 months under sections 11.61(1)(b) or (c) of the Statutes.

Failure to List the Source of a Printed Advertisement

13. Petitioner realleges and reincorporates paragraphs 1 through 12 of this Verified Complaint.
14. Upon information and belief, the yard signs constituted a printed advertisement or other communication without the source appearing clearly thereon distributed by the Honadel Committee in violation of section 11.30(2) of the Statutes, making the Honadel Committee liable for a forfeiture of up to \$500 pursuant to section 11.60(1) of the Statutes.
15. Upon information and belief, the yard signs constituted a printed advertisement or other communication without the source appearing clearly thereon distributed by Honadel in violation of section 11.30(2) of the Statutes, making Honadel liable for a forfeiture of up to \$500 pursuant to section 11.60(1) of the Statutes.
16. A copy of this Verified Complaint has been served via mail on both Honadel at his address of residence as listed above, and the Honadel Committee, at the address listed on its registration statement.

Prayer for Relief

Petitioner prays that the Elections Board takes the following action with respect to the allegation contained herein:

- A. Investigate Honadel and the Honadel Committee with respect to the facts alleged in this Verified Complaint;
- B. Commence an action in Circuit Court with respect to the civil violations;
- C. Refer the criminal violations to the appropriate prosecutorial authority;
- D. Order such other relief, at law or equity, that the Elections Board and may deem just and equitable.

On August 14, 2003, the respondent filed a response to the complaint in which he acknowledged that “two of the sixteen signs had disclaimers that were either missing or had worn off,” but asserted that he immediately took corrective action. The response reads as follows:

I am responding to a complaint filed by the Democratic Party of Wisconsin, in which they allege disclaimers are missing from printed signs in my campaign.

I believe their claims to be false, as all my yard signs were printed with proper disclaimers. And since the complaint filed apparently showed no proof of any missing disclaimers, I have no way of knowing what printed material was missing disclaimers.

Nevertheless, upon hearing of the complaint, I did a review of our larger 4 foot square plywood signs and discovered that two of the sixteen signs had disclaimers that were either missing or had worn off. Disclaimers were immediately written on those signs with a marker and the situation was rectified. Given that one of these larger signs happened to be located on property next to my opponent’s campaign headquarters, perhaps this was the missing disclaimer the Democratic Party was referring to.

The Board’s counsel asked the complainant for a reply to the response of Mr. Honadel, but none was forthcoming.

ISSUES

1. Whether candidate Mark Honadel failed to comply with s.11.30(2), Stats., by not including on publicly displayed campaign signs an identification of the source of those signs?
2. If candidate Honadel failed to comply with s.11.30(2), Stats., by not including on publicly displayed campaign signs an identification of the source of those signs, what sanctions, if any, should be taken against his committee?

STATUTES

11.30 Identification of political contributions, disbursements and communications.

(1) No disbursement may be made or obligation incurred anonymously, and no contribution or disbursement may be made or obligation incurred in a fictitious name or by one person or organization in the name of another for any political purpose.

(2)(a) The source of every printed advertisement, billboard, handbill, sample ballot, television or radio advertisement or other communication which is paid for by or through any contribution, disbursement or incurred obligation shall clearly appear thereon. This paragraph does not apply to communications for which reporting is not required under [s. 11.06 \(2\)](#).

(b) Every such communication the cost of which is paid for or reimbursed by a committee or group, or for which a committee or group assumes responsibility, whether by the acceptance of a contribution or by the making of a disbursement, shall be identified by the words "Paid for by" followed by the name of the committee or group making the payment or reimbursement or assuming responsibility for the communication and the name of the treasurer or other authorized agent of such committee or group.

(c) Every such communication which is directly paid for or reimbursed by an individual, including a candidate without a personal campaign committee who is serving as his or her own treasurer, or for which an individual assumes responsibility, whether by the acceptance of a contribution or by the making of a disbursement, shall be identified by the words "Paid for by" followed by the name of the candidate or other individual making the payment or reimbursement or assuming responsibility for the communication. No abbreviation may be used in identifying the name of a committee or group under this paragraph.

(em) The source of each printed advertisement, billboard, handbill, paid television or radio advertisement or other communication made for the purpose of influencing the recall from or retention in office of an individual holding a state or local office shall clearly appear thereon in the manner prescribed in [pars. \(b\)](#) and [\(c\)](#).

(fm) This subsection does not apply to communications printed on pins, buttons, pens, balloons, nail files and similar small items on which the information required by this subsection cannot be conveniently printed. The board may, by rule, specify small items not mentioned in this paragraph to which this subsection shall not apply.

(h) Notwithstanding [par. \(a\)](#), the attributions required by this subsection in written communications shall be readable, legible and readily accessible.

(i) No person may publish or disseminate, or cause to be published or disseminated any communication in violation of this subsection. A communications medium which in good faith relies on the representations of any person who places an advertisement with such medium as to the applicability of this subsection to such person does not violate this paragraph as a result of publication or dissemination of that advertisement based on such representations, provided that the representations are reasonable.

DISCUSSION (The discussion of the Foeckler and Honadel complaints in both memoranda is identical because the complaints are virtually identical.)

The Honadel and Foeckler complaints are and ought to be discussed together because they are not just similar, but because they are identical: only the names, the addresses and the subject matter (campaign literature versus campaign signs) have been changed. The two complaints have been reproduced side-by-side as an exhibit to this memorandum to demonstrate that they are, almost verbatim, the same complaint with the Democratic Party merely having changed the respondent from Al Foeckler, the Democratic Party's candidate for the 21st Assembly District seat in the special election to Mark Honadel, the Republican Party's candidate for the 21st Assembly District, in the special election on July 22, 2003.

Complainant Warkentin's point in reproducing the Republican Party's complaint appears to be not only that people in glass houses ought not throw stones, but, also, that anyone can find a source identification (disclaimer) violation in almost any or every campaign, and, most importantly, that enforcement action, if any, against the Foeckler campaign should be matched with equivalent enforcement action against the Honadel campaign. The respondent's real message is probably that enforcement action should not be taken against either campaign.

What the two complaints establish is that during the course of a campaign for elective office, mistakes are made and, perhaps, the most commonly occurring mistake is the omitted source identification (commonly misnamed: "disclaimer" and more accurately referred to as "attribution"). Whether the omission occurs on a flyer or handbill or occurs on a yard sign or bumper sticker, source identifications (attributions) are omitted in many more campaigns than are ever the subject of a complaint to the Elections Board. In most or many cases in which this omission occurs, the campaign that has omitted the disclaimer contacts our office before anyone files a complaint and informs our office of the violation (as appears to have been the case with Mr. Foeckler). The Board's staff recommends the appropriate corrective action depending on what type of communication is involved and what may be done to add the attribution. The campaign follows the staff's recommendation and that ends the matter.

Most of the complaints that the Board's staff receives about omitted attributions are not in the form of a verified complaint that would require Board action. Most of such complaints are in the form of a telephone call complaining about campaign signs which appear to be missing a source identification. The Board's staff's usual protocol, when receiving such complaints, is to inform the complainant that they should contact the campaign and give the campaign a reasonable period of time to take corrective action. If the campaign fails to correct the problem, the complainant may call us back and we will intervene with the campaign. After the second call, the staff will obtain information establishing the location of the offending signs and then contact the responsible campaign to require it to take corrective action. This protocol has been relatively effective.

Where the omission has occurred in campaign literature that has been distributed, corrective action is, effectively, limited to any remaining literature that has not been distributed. Under those circumstances, the staff does advise the campaign to send the Board a letter acknowledging the error and describing whatever corrective action was taken. That letter is placed in the candidate's file, but no further action is taken. This protocol has also worked very well.

In each of the two complaints, the candidate took whatever corrective action he could after becoming informed of the problem – candidate Foeckler said that *"This error has been addressed and the remaining copies of this particular piece have been returned to the printer for correction"* and candidate Honadel said *"I did a review of our larger 4 foot square plywood signs and discovered that two of the sixteen signs had disclaimers"*

that were either missing or had worn off. Disclaimers were immediately written on those signs with a marker and the situation was rectified.”

The question for the Board is whether, given the described circumstances, any enforcement action ought to be taken against either or both of the campaigns. If enforcement action is taken against the campaigns, that raises a question about the Board’s staff’s protocol when receiving telephone complaints about campaign signs with alleged omitted source identifications.