

Opinion No. 81-21

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OPINION OF: Jeff Bingaman, Attorney General

BY: Jill Z. Cooper, Deputy Attorney General

TO: Senator Mike Alarid, 1608 Escalante, S.W., Albuquerque, New Mexico 87104

ELECTIONS

Synopsis: The printing, publication and distribution of printed campaign material without identification of the sponsor or printer does not apply to commercially available stickers.

QUESTIONS

Is the distribution by a candidate for public office of a commercially available sticker containing only a picture of an apple and no written information subject to the requirements of Sections 1-19-16 and 1-19-17 NMSA 1978?

CONCLUSIONS

No.

ANALYSIS

Section 1-19-16 NMSA 1978 governs the **printing** and **publication** of any campaign advertising or communication and provides that

"A. It is unlawful for any person, organization or political committee to publish or print any campaign advertising or communication which does not specify the name of the sponsor or the name of a responsible officer who authorized the printing or publication of such material, in any election, special election, school district election or an election authorizing a bond issue. This prohibition extends only to handbills, petitions, circulars, letters, or similar written material.

B. Any printing establishment shall identify itself as the printer of the campaign material.

C. Any person, organization or political committee violating the provisions of Subsection A or B of Section 1-19-16 NMSA 1978 is guilty of a fourth degree felony and shall be punished as provided in the Criminal Code."

OPINION

Section 1-19-16, in effect, would apply only to those printed materials which a candidate has actually caused to be printed or published for campaign purposes and not to commercially available printed material which, like an apple sticker, is available for purchase by anyone for any purpose. The criminal penalties for violation of Section 1-19-16 run against the person or committee responsible for the printing or publication and the printer himself, each of whom must be identified on the printed material.

Being a penal statute, Section 1-19-16 must be strictly construed and of sufficient certainty so that a person will know if he is committing an illegal act. **State v. Collins**, 80 N.M. 499, 458 P.2d 225 (1969). Persons who print or publish stickers which happen to be purchased by a candidate for use in a campaign cannot be liable for failing to identify the candidate or the printer on the sticker.

{*256} Moreover, by its own terms, Section 1-19-16 applies **only** "to handbills, petitions, circulars, letters or similar written material." A sticker, printed with a picture of an apple and containing no writing, is plainly not a handbill, petition, circular or letter within the ordinary meaning of those specific terms. It may be assumed that statutory words are intended to be used in their ordinary and usual sense unless the contrary is apparent. **State ex rel. Bird v. Apodaca**, 91 N.M. 279, 573 P.2d 213 (1977).

Nor would such a sticker be within the category defined by the general term "similar written material." A general term included in a list of specific terms is intended to encompass only items having the same characteristics as those enumerated. **Grafe v. Delgado**, 30 N.M. 150, 228 P. 601 (1924). The enumerated items may all be characterized as printed material conveying certain written information. The apparent purpose for requiring that the names of the sponsor and the printer be printed on campaign material is to identify the persons responsible for the content of the information being conveyed. Although the presence of the sticker may indicate support for the candidate with whom the symbol is associated, no information is being conveyed by the sticker itself and therefore no need exists for such identification.

Section 1-19-17 governs the **distribution** of campaign advertising or communication and provides that

"A. It is unlawful for any person, organization or political committee to circulate or distribute any campaign advertising or communication which does not specify the name of the sponsor of such material, in any election, special election, school district election or an election authorizing a bond issue. This prohibition extends to handbills, petitions, circulars or similar written material.

B. Any person, organization or political committee violating the provisions of Subsection A of Section 1-19-17 NMSA 1978 is guilty of a misdemeanor and shall be punished as provided in the Criminal Code."

Like Section 1-19-16, Section 1-19-17 is intended to apply to "handbills, petitions, circulars or similar written material." However, unlike Section 1-19-16, Section 1-19-17

does not, on its face, necessarily preclude reference to written materials which have not been printed or published for purposes of a campaign.

Nevertheless where two statutes have been enacted at the same time and pertain to the same subject matter they are in **pari materia**, **State v. Clark**, 80 N.M. 340, 455 P.2d 844 (1969), and may be construed together as if different sections of the same act, **State ex rel. Red River Valley Co. v. District Court of Fourth Judicial District**, 39 N.M. 523, 51 P.2d 239 (1935). Thus, under the rule of **pari materia**, Sections 1-19-16 and 1-19-17 may be read together so that the "campaign advertising or communication" referenced in Section 1-19-16 is the same as that referenced in Section 1-19-17. Since Section 1-19-16 necessarily implies that campaign material subject to identification requirements must be written material which a candidate has caused to be printed or published and excludes printed material which is commercially available to anyone, such exclusion would apply to Section 1-19-17 as well.

{*257} In short, the provisions of Section 1-19-16 and 1-19-17 which prohibit the printing, publication and distribution of printed campaign material without identification of the sponsor or printer do not apply to commercially available stickers printed with a picture of an apple which may be readily purchased by persons other than a candidate for whatever purpose.

ATTORNEY GENERAL

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