

Members present

Hon Andrew McGechan (President)
Ms Belinda Clark – *ex officio* (Secretary for Justice)
Dr Helena Catt (Chief Executive)

Dated: 19 August 2008

Decision Number: 2008-23

Initiated by

DEIDRE FELL ON 14 JULY 2008

In relation to

Election advertisement

NEW ZEALAND LABOUR PARTY

Findings and Determination

Mr Burns did not display a correct promoter statement for the party advertising on his campaign caravan. No offence committed because Mr Burns did not wilfully contravene the Act.

No offence committed under sections 63(4) or 65(4) of the Electoral Finance Act 2007 because Mr Burns did not wilfully publish, or cause or permit to be published, an election advertisement in contravention of sections 63 or 65.

This headnote does not form part of the decision.

Subject

Campaign caravan used by the Labour Party candidate Brendon Burns in Christchurch Central.

There was a promoter statement on the caravan for the financial agent of Mr Burns but in the photographs provided no promoter statement appeared to be visible for the party aspect of the advertising.

Issues raised

The Electoral Commission considered whether:

- the caravan is a party advertisement within the meaning of the Electoral Finance Act 2007 and, if so, it contains a promoter statement as required by the Act
- any offence has been committed.

The Electoral Commission sent a general advisory to party and third party financial agents, about ensuring that promoter statements are reasonably readable by the public and remain visible, and published it on the Elections New Zealand website on 30 June 2008, just prior to receiving the complaint.

A further issue raised relates to candidate advertising and has been considered by the Chief Electoral Officer, who has responsibility for candidate advertisement issues.

Electoral Finance Act 2007

Section 5 of the Act defines an election advertisement to be, in summary, any form of words and/or graphics that could reasonably be regarded as encouraging or persuading voters to vote or not to vote in a particular fashion.

Section 63 of the Act requires any election advertisement published during the regulated period to contain a statement of the name and address of the promoter of the advertisement.

Section 65 applies both within the regulated period and at other times, but only to election advertisements that encourage voters to vote in favour of the subject of the advertisement. This section also requires such election advertisements to contain a statement of the name and address of the promoter of the advertisement and, for advertisements in favour of a party, the financial agent of the party must authorise the promoter to promote the party.

Sections 63(4) and 65(4) provide that it is an offence to wilfully contravene either of the above requirements.

Comments from the Labour Party

The financial agent of the Labour Party advised that he had authorised the party advertisement component and requested that it contain his promoter statement as well as that of the candidate. He further advised that this has now been done and was so done before the Electoral Commission received the initiating query. He apologised for the delay and submitted that it was not wilful on his part or that of Mr Burns.

Mr Burns confirmed that the caravan was inspected by Mike Smith, the Labour Party financial agent, in May 2008. He explains a first effort to add Mike Smith's authorisation resulted in the promoter statements being different sizes and he rebooked the caravan for sign-writing with completion in mid-July. He states that there were hoardings from previous elections in the window with Mike Smith's name and the party postal address, displayed from May, and some also with his own financial agent's authorisation.

Electoral Commission's Determination

The Electoral Commission has considered the requirements of the Act along with the items listed as exhibits (below), and concluded that the signage on the caravan amounts to a party advertisement for the purposes of the Electoral Finance Act.

Sections 63 and 65 provide that a promoter must not *publish, or cause or permit to be published, an election advertisement* unless the requirements of those provisions are met, including that the promoter is authorised to promote a party and that advertisements contain promoter statements.

The Electoral Commission is satisfied that Mr Burns was authorised to promote the Labour Party in accordance with section 65, and that promoter statements were displayed, but noted that the visible party promoter statements did not contain the residential address of the Labour Party financial agent as required under sections 63 and 65.

Section 63(4) and section 65(4) provide that *every promoter is guilty of an illegal practice who wilfully contravenes* section 63(2) or section 65 respectively.

The Electoral Commission accepts that Mr Burns had taken steps to ensure compliance with the promoter statement requirements of sections 63 and 65 but matters went awry, and he then rectified the matters as he became appraised of them. As a result, the Commission formed the view that on this occasion Mr Burns did not wilfully publish, or cause or permit to be published, an election advertisement in contravention of section 63 or 65.

For the above reasons it is the view of the Electoral Commission that Brendon Burns did not commit an offence for the purposes of section 63 or section 65 of the Electoral Finance Act 2007

Signed for and on behalf of the Electoral Commission



Dr Helena Catt
Chief Executive and Commission Member
New Zealand Electoral Commission

26 August 2008

Exhibits

The following items were received and considered by the Electoral Commission when it determined this matter:

1. email 14 July 2008 from Deidre Fell
2. copy of photos of the caravan
3. email 14 July 2008 to financial agent for the Labour Party, inviting comment
4. letter 28 July 2008 from financial agent of the Labour Party
5. letter 31 July 2008 to Brendon Burns inviting comment
6. email 7 August 2008 from Brendon Burns