

Members

Hon Andrew McGechan (President)
Chief Judge Joe Williams (Maori Land Court)
Ms Belinda Clark (Secretary for Justice)
Dr Helena Catt (Chief Executive)

Dated: 12 June 2008

Decision Number: 2008-06

Initiated by

ELECTORAL COMMISSION

In relation to

Election advertisements

GREEN PARTY OF AOTEAROA NEW ZEALAND

Findings and Determination

The promoter statement on a billboard in Wellington promoting the Green Party did not contain the correct address but the offence is so inconsequential to the public interest that the matter will not be reported to the Police.

Contravention of sections 63(2)(a) and 65(1)(b) of the Electoral Finance Act 2007, by failure to display the residential address of the promoter, amounting to offences under sections 63(4) and 65(4) of the Act. For the purposes of section 70 the offence is so inconsequential there is no public interest in reporting the facts to the Police.

This headnote does not form part of the decision.

Subject

Billboard displayed on the corner of Old Hutt Road and Ngaio Gorge Road, Wellington, promoting the Green Party.

The Electoral Commission considered the billboard in response to a number queries and comments that the promoter statement could not be read while driving or at a distance.

The promoter statement on the billboard contains the address for the Green Party headquarters. The statement is not clearly readable from the footpath, as from that angle other structures beneath the billboard obscure a portion of the promoter statement along with the majority of the content of the billboard.

Issues raised

The Electoral Commission considered whether:

- the billboard is an election advertisement within the meaning of the Electoral Finance Act 2007 and, if so, it contains a promoter statement that satisfies the criteria in the Act
- any offence has been committed and, if so, the offence should be reported to the Police.

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 4 defines

address to mean, in relation to an individual person, the full address of the place where the person usually resides.

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.

Sections 63(4) and 65(4) provide that it is an offence to wilfully contravene either of the above requirements. If the Electoral Commission believes an offence has been committed under those sections, section 70 requires the Commission to report to the Police the facts that belief is based on unless the Commission considers that the offence is so inconsequential there is no public interest in reporting those facts to the Police.

Comments from Green Party of Aotearoa New Zealand

The financial agent for the Green Party, who is identified as the promoter of the billboard, provided a written explanation including that:

- the billboard was prepared before the Act came into effect
- the promoter statement was later added, setting out the address of the party national office, but this was before the Electoral Commission had ruled that the statement must contain the residential address of the party's financial agent
- there was no intention to obscure the promoter statement as it was simply positioned on the billboard in line with the design of the image
- the billboard will be taken down and modified to contain the residential address of the financial agent, and the font used will be three times the size of that of the current promoter statement.

Electoral Commission's Determination

The Electoral Commission has considered the requirements of the Act along with the items listed as exhibits (below).

In the view of the Electoral Commission the billboard is an advertisement within the meaning of section 63 and section 65 as it can reasonably be regarded as encouraging or persuading voters to vote for the Green Party and it was published in the regulated period.

The Electoral Commission is of the view that a promoter statement on a billboard does not need to be legible to a motorist so long as it is legible to a pedestrian viewing the board from public land. The Commission accepts the financial agent's explanation that the obscuring of the promoter statement was accidental, and considers that to an extent this was beyond the financial agent's control.

The Electoral Commission considers that the promoter statement on the billboard does not comply with section 63(2)(a) of the Act or with section 65(1)(b) as the address displayed is not the residential address of Jon Field, the promoter of the billboard.

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. It appears to the Electoral Commission that the statement, although incorrect, was deliberately displayed on the billboard and as such could be viewed as being a wilful contravention.

Where the Electoral Commission believes that an offence has been committed under Part 2 sub-part 6 of the Act, section 70 requires the Commission to report to the Police the facts that belief is based on unless the Commission:

considers that the offence is so inconsequential that there is no public interest in reporting those facts to the New Zealand Police.

The Electoral Commission is required to make a value judgement in relation to the nature and extent of the public interest and the level of seriousness involved in the concept of "inconsequential" (see the case of *Judith Kirk v The Electoral Commission* unreported, 9 June 2008, Mackenzie J, HC Wellington CIV 2008-485-805).

The Electoral Commission considered all the circumstances of this case including:

- this is the first instance of its type by the Green party and the error occurred prior to the electoral agencies' educational notice to financial agents and party secretaries regarding the correct address to use in promoter statements
- the promoter of the billboard was identified and under the circumstances there were no adverse consequences
- the obscuring of the promoter statement from the footpath by other buildings was not within the Financial Agents control.
- remedial action has been taken.

As a result, the Electoral Commission considers that the offence is so inconsequential that there is no public interest in reporting the facts to the Police.

For the above reasons it is the view of the Electoral Commission that the financial agent of the Green Party of Aotearoa New Zealand committed an offence for the purposes of sections 63(4) and 65(4) of the Electoral Finance Act 2007 but the offence is so inconsequential that there is no public interest in reporting the facts to the Police.

Signed for and on behalf of the Electoral Commission



Dr Helena Catt
Chief Executive and Commissioner
New Zealand Electoral Commission

27 June 2008

Exhibits

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

- 1 Photographs of the billboard
- 2 Letter from the financial agent of the Green Party of Aotearoa New Zealand