

Members present

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

Dated: 18 September 2008

Decision Number: 2008-30

Initiated by

OLIVER WOODS ON 10 AUGUST 2008

In relation to

**Election advertisement
THE NEW ZEALAND NATIONAL PARTY**

Findings and Determination

National MP Chris Auchinvole's website does not contain party election advertisements within the meaning of sections 4 and 5 of the Electoral Finance Act 2007.

This headnote does not form part of the decision.

Subject

The website of Chris Auchinvole MP does not appear to contain a promoter statement. It carries the Parliamentary crest indicating it has been funded through Vote: Parliamentary Service.

The website contains links to National Party policies including the "Our Policies So Far" document (which the Electoral Commission determined in decision 2008-26 does not amount to election advertising), news items and speeches, a newsletter, upcoming events, and so on.

An article entitled "National will boost investment and infrastructure", displayed on the Home page of the website, criticises the Labour Party's handling of various matters and claims the National Party will do better and outlines how this will be achieved. A new item entitled "getting kids back into sport" also criticises the steps the Labour party has taken, suggests that the National Party will take a more practical approach, and states things that the National Party will not do "unlike Labour".

The "speeches" link tends to be limited to speeches delivered in the House.

Issues raised

The Electoral Commission has published guidance on its website in respect of activities carried out by MPs in their capacity as MPs and funded through Vote: Parliamentary Service:-

- "Electioneering" as defined in directions of the Speaker made under the Parliamentary Service Act 2000 has a narrower definition than "election advertisement" as defined in the Electoral Finance Act 2007. An expense which is lawfully funded through Vote: Parliamentary Service may nevertheless be an "election advertisement" under the Electoral Finance Act, and may also constitute an election expense.
- The question of whether a party advertisement is an activity that relates to a member of Parliament in his or her capacity as a member of Parliament must be determined on a case by case basis by looking at the advertisement as a whole. The question will look at whether the activity occurs within a member's capacity as a member of Parliament, or within some other capacity, like the member's capacity as a candidate or list candidate for election. At one end

of the spectrum, the simple advertising of constituency services and comment on proceedings of Parliament are included within the exemption. At the other, advertising expressly seeking financial support or a vote for the party are outside the exemption.

The Electoral Commission considered whether the website contains party election advertisements within the meaning of the Electoral Finance Act 2007 and, if so, whether the provisions of the Act have been complied with.

The Chief Electoral Office is responsible for administering the candidate advertising provisions of the Act.

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.

Comments from the Chris Auchinvole MP

Mr Auchinvole and the financial agent of the National Party were invited to comment. Mr Auchinvole responded that the website is not an election advertisement as it is not for campaigning but for information, and is published in his capacity as an MP and is created.

Electoral Commission's Determination

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

Whether any particular item is an election advertisement within the meaning of section 5 of the Electoral Finance Act is a question of circumstances and degree. In the Electoral Commission's view the statutory test is not whether an item "can be regarded" as encouraging or persuading voting in a particular way – as a matter of logic, almost anything "can" be so regarded – the test is whether the item "can reasonably" be so regarded, allowing inclusion within the definition only when it is objectively reasonable to do so.

The Electoral Commission believes it is essential to democratic elections that parties can inform the public of the policies which will be implemented if elected and that, particularly in light of New Zealand Bill of Rights Act considerations, it would not be reasonable to regard mere statements of policy as election advertisements and subject to the restraints of the Electoral Finance Act. Therefore the Commission is of the view that items which are accounts or reasoned criticisms of policy, or accounts or reasoned criticisms of actions or inactions, generally are not "reasonably" regarded as election advertisements as they are essential to informed democratic elections.

The Electoral Commission considers that accompanying identification of the proponents of such items does not of itself convert the items into election advertisements, but disproportionate display of photographs, names or logos could do so. Other matters that might bring such items within the definition of an election advertisement include the addition of persuasive content which lack an information base such as party slogans, self promotion or unreasoned criticism of opponents, and exhortations to vote in a particular manner.

The Electoral Commission has previously considered one item which is displayed on Mr Auchinvole's website and some of the linked items which are displayed on the National Party website. The Commission determined that the "Our Policies So Far" document does not amount to election advertising (decision 2008-26) and notes that the National Party website contains a promoter statement.

In respect of the other items, the Electoral Commission considers they are statements of policy and actions taken, and that the criticisms do not go beyond what might be considered robust debate. The items do not contain any words or graphics that could reasonably be regarded as encouraging or persuading voters to vote or not to vote for a party. Therefore in the Commission's view the website does not contain party advertising for the purposes of the Electoral Finance Act.

For the above reasons it is the view of the Electoral Commission that the website of Chris Auchinvole MP does not contravene the party advertisement provisions of the Electoral Finance Act 2007 as it is not a party election advertisement within the meaning of sections 4 and 5 of the Act

Signed for and on behalf of the Electoral Commission

A handwritten signature in black ink that reads "Helena Catt". The signature is written in a cursive, flowing style.

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

9 October 2008

Exhibits

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

1. email 10 August 2008 from Oliver Woods raising the issue
2. various downloads from the website of Chris Auchinvole MP on 12 August 2008
3. letter 4 September 2008 from Chris Auchinvole MP