

## Members present

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

Dated: 26 November 2008

Decision Number: 2008-47

Initiated by

**MARK OLDERSHAW, FINANCIAL AGENT FOR  
THE NATIONAL PARTY, ON 14 OCTOBER 2008**

In relation to

**Election advertisements**

**GREEN PARTY OF AOTEAROA NEW ZEALAND**

## Findings and Determination

Green Party signs in Palmerston North did not contain a promoter statement 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 a promoter statement, amounting to an offence 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

Signs on fences in Marne Street, Palmerston North, encouraging votes for the Green Party. The signs do not contain visible promoter statements.

## Issues raised

The Electoral Commission considered whether:

- the signs are election advertisements within the meaning of the Electoral Finance Act 2007 and, if so, it contain promoter statements that satisfy the criteria in the Act and their publication is authorised as required by 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 Electoral Finance 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.

Sections 63 and 65 also impose requirements in relation to who may promote, or be authorised to promote, an election advertisement.

Sections 63(4) and 65(4) provide that it is an offence to wilfully contravene 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 the Green Party of Aotearoa New Zealand**

The Green Party financial agent responded that the signs have been torn down and/or vandalised on a number of occasions and that in putting them back in place the promoter statement had been covered by plywood on one sign and cut off the bottom of another, but that in the original state of publication the signs contained promoter statements. He further indicated that clear instructions were given to each electorate about signage but that on this occasion the instructions had been overlooked, and that on receiving notification of the issue he gave instructions for the promoter statement to be uncovered on the first sign and to remove the other.

The financial agent submitted that in order to commit an offence under sections 63 or 65 of the Act the contravention must be wilful and in this case the failure to display promoter statements was inadvertent and contrary to instruction, and as soon as it was brought to the attention of the party it was remedied. He further submitted that any offending was so inconsequential there is no public interest in reporting the facts to the Police in that the signs were clearly erected for and by the Green Party and the problem has since been remedied, and the purpose of the Act will not be advanced by pursuing the matter further.

## **Electoral Commission's Determination**

The Electoral Commission has considered the requirements of the Electoral Finance Act and 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. Such approach is consistent with the aims of the New Zealand Bill of Rights Act.

The Electoral Commission is of the view that the combination of the words and graphics in the signs can reasonably be regarded as encouraging or persuading voters to vote for the Green Party within the meaning of election advertisement in section 5(1) of the Electoral Finance Act and within the meaning of section 65(1) of the 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 advertisement contains a statement setting out the name and address of the promoter.

The signs do not contain a visible promoter statement. The Electoral Commission considers the failure to set out the name and address of the promoter contravenes sections 63(2)(a) and 65(1)(b) of the Act.

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 previously issued an advisory to political party and third party financial agents, advising them to ensure that all involved in displaying election advertisements are aware of the requirement to display the promoter statements. It appears to the Commission that,

notwithstanding the financial agent's instructions, the person(s) affixing the signs to the fence deliberately did so in a manner that failed to display the required promoter statements. As such, those actions could be viewed as wilful contraventions of the requirements of Act.

Where the Electoral Commission believes that an offence has been committed under Part 2 sub-part 6 of the Electoral Finance 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 facts of this case, including that the signs had originally been published containing promoter statements and the problem arose because of replacement after vandalism, and is gratified that immediately the issue was brought to the attention of the financial agent it was remedied. In such circumstances the Commission is of the view that the offence is so inconsequential that there is no public interest in reporting the matter to the Police.

The Electoral Commission has formed its view on the basis of the information available to it, and is not the final decision maker in respect of contraventions of electoral laws and any offences which may arise from such contraventions. Other agencies, including the Police, may reach a different conclusion as a result of their different investigative mandate and wider discretion. Therefore the Commission acknowledges that whether a prosecution should follow, and who should be the subject of any such prosecution, is a matter for the Police.

**For the above reasons it is the view of the Electoral Commission that the Green Party of Aotearoa New Zealand signs in question were published in circumstances amounting to the commission of an offence for the purposes of section 63(4) and section 65(4) of the Electoral Finance Act 2007 but that the offence is so inconsequential there is no public interest in reporting the matter to the Police**

Signed for and on behalf of the Electoral Commission



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

3 December 2008

### **Exhibits**

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

1. letter 14 October 2008 from National Party financial agent raising the issue
2. copies of four photographs of signs
3. letter 9 November 2008 from Green Party financial agent