

Contracted Hearing Officer Decision

Case: Kinney vs O'Neill

Date: March 20, 2024

An Administrative Hearing regarding a Campaign Finance Complaint filed by James Kinney (Kinney) against Jenny O'Neill (O'Neill) was convened by the undersigned contracted Hearing Officer at 9:30 a.m. on Wednesday, March 20, 2024.

On February 5, 2024, Kinney submitted a Campaign Finance Complaint Form to the City Clerk's Office in which Kinney alleged O'Neill, Candidate for Ward 5 Special Election, engaged in a violation of Title 2 – Administration and Personnel; Chapter 2.54 Campaign and Political Finance in Municipal Elections, of the Lakewood Municipal Code (Code). Newell specifically alleged O'Neill violated the following Code provision:

Disclaimer Violations

Kinney asserts O'Neil failed to include the "paid for by" disclaimer as required by Section 2.54.030(A)(8)(a) on communications including campaign related text messages. Kinney included photos of a campaign text which did not appear to include the mandatory disclaimer, in support of his claim.

Reporting Violations

After Jay Robb (Robb), the City Clerk, advised O'Neill in an email dated February 9, 2024, of the allegations asserted, O'Neill timely filed a response on February 10, 2024. In addressing the allegation she failed to comply with the "disclaimer" requirements, O'Neill explained she experienced some confusion around the need for a disclaimer on text messages since phone communication was not listed in the method that requires a disclaimer under LMC 2.54.030, A8(a). However, she said when she was later advised it would be wise to include a disclaimer, she did so. While she acknowledged the mistake, she stated it was unintentional.

Issues:

Whether O'Neill violated the City Code when she failed to include a "paid for by" disclaimer on a text campaign communication?

Findings of Fact:

Kinney filed a written complaint with the City Clerk in which he alleged a violation of the City Code engaged in by O'Neil in conjunction with a campaign in support of her bid for a seat on the Lakewood City Council. Per the authority given to the City Clerk under the Code, the City Clerk advised O'Neil of the allegations asserted and provided O'Neil the opportunity to respond to the alleged noncompliance within 72 hours. (See 2.54.050(B) (1.1))

O'Neil timely responded to the Notice on February 10, 2024.

A Hearing was held on March 20, 2024, during which the City Clerk introduced into the record the following documentation:

- Campaign Finance Complaint Form filed by James Kinney dated February 5, 2024, with photos of O'Neill text messages.
- Candidate Affidavit of Jenny O'Neill dated November 28, 2023.
- Email correspondence from Jay Robb dated February 9, 2024, to Jenny O'Neil; Subject: Election Complaint Letter to Candidate.
- Email Correspondence from Jenny O'Neill dated February 10, 2024, to Jay Robb, Subject Election Complaint Letter to Candidate.

The City Attorney entered into the record the following documentation:

- Stipulation and Order In the Matter of James Kinney, Complainant vs Jenny O'Neill, Candidate dated March 20, 2024.

Notably, the Stipulation and Order provided the City requested an admonition in lieu of a fine and a recommendation that, in the future, the candidate comply with all applicable rules regarding campaign financing.

At the Hearing, when O'Neill was placed under oath and asked if the subject text that serves as the basis for the complaint was the only text she sent without disclaimer language, O'Neill testified it was.

Analysis:

Whether O'Neil violated the City Code when she failed to include a "paid for by" disclaimer on communications including printed materials and her candidate website?

O'Neill admitted she inadvertently sent a campaign related text message that did not include the "paid for by" disclaimer as required by the City Code. She denied she did so intentionally. The City requested an admonition in lieu of a fine in recognition of the truncated timeline of a special election and due to the candidate having no intention of violating the disclosure requirements.

Decision:

Based on review of the complaint, related materials entered into evidence by the City Clerk, the Stipulation and Order entered into the record by the City Attorney, as well as testimony provided at the Hearing, the Hearing Officer has determined to the extent O'Neil violated the City Code, she did not do so unintentionally. Accordingly, the Hearing Office adopts the recommendation of the City Attorney to admonish O'Neill for the inadvertent oversight and not impose a penalty as permitted by the City Code.

Respectfully submitted,

/s/

Victoria T. Aguilar

Contract Hearing Officer

City of Lakewood, Colorado