



Lakewood
Colorado

City of Lakewood

Office of the City Clerk
Michele Millard

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April 22, 2020

Francis Milhollin
868 S. Alkire St.
Lakewood CO 80228

**Re: *Dismissal of campaign finance complaint
West Suburban Community Media LLC dba Lakewood Sentinel***

Dear Mr. Milhollin:

This office received your Campaign Finance Complaint dated February 27, 2020, alleging that West Suburban Community Media LLC dba Lakewood Sentinel ("the Sentinel") violated Sections 2.54.020, 2.54.071(3), and 2.54.070(1) of the Lakewood Municipal Code ("the Code") because the Sentinel engaged in electioneering communications prior to the November 5, 2019 election. Specifically, the allegations state that the Sentinel failed to report its contributions and expenditures and failed to have the required disclaimer language included in its communications. This office will address each of the exhibits or groups of exhibits in turn as there are several issues that are either similar or dissimilar.

As the City Clerk, it is my responsibility at this stage to evaluate whether a campaign finance complaint is frivolous or groundless, or not, per Section 2.54.050(B)(1) of the Code. In this case, that determination depends on whether the articles and podcast published by the Sentinel constitute "electioneering communications." The Colorado Court of Appeals has considered that question, and has used an intent-based approach; i.e., the Court concluded that in order to be an electioneering communication, the intent of the document must be "express advocacy" for or against a specific candidate.

Exhibits 1, 2 and 3: The Complaint alleges that the Sentinel was an electioneering communication, as demonstrated by the content in Exhibits 1, 2 & 3. There, you have alleged that the Sentinel published "favorable" photographs of Mayor Adam Paul at various community events. But nowhere in these three exhibits is the election mentioned or the Mayor identified as a candidate for office. By all appearances, the Mayor was acting in his capacity as an elected official by updating Lakewood residents on special events happening around the City. The Sentinel did not publish the Mayor's position on any election issues or otherwise further his campaign as a candidate for

Mayor. In view of the Court of Appeals' determination that a publication must contain "express advocacy" in order to be considered an electioneering communication, I see no reasonable argument that the innocuous photos of an elected official at community events could be considered election communications.

Exhibits 4, 5, 6, & 8: In these exhibits, both candidates for Mayor were represented and asked open-ended questions about why they are seeking office, what makes them the best person for the job, and so on. The Sentinel offered both mayoral candidates an opportunity to discuss the issues facing the City and their fitness for this particular position. The Sentinel did not take a position for or against either candidate nor did it urge the readers of the publication to vote for or against either candidate. The Sentinel included direct quotes from both the candidates running for office. Inasmuch as the content of these exhibits is an attempt to present balanced and fair information about the two candidates, I cannot consider the exhibits to be express advocacy for either candidate, and therefore cannot conclude that these exhibits constitute electioneering communications.

Exhibit 7: In this exhibit, Mayor Paul and Councilmember Dana Gutwein are reporting on a new licensing program approved by City Council. Once again, the Sentinel did not mention the upcoming election or identify either individual as candidates. By all appearances, the Sentinel presented the Mayor and Councilmember Gutwein in their capacity as elected officials updating Lakewood residents on a new licensing program for the City. The Sentinel did not state either individual's position on any issues in the election, nor did it contain any material attempting to further their respective campaigns. Once again, applying the rule established by the Court of Appeals, the contents of Exhibit 7 cannot not reasonably be viewed as express advocacy, and therefore Exhibit 7 cannot be considered an electioneering communication.

The final Exhibit (not numbered) included in the complaint relates to a podcast that the Sentinel produced and published on January 14, 2020, nearly two months after the election on November 5, 2019. As such, the podcast cannot possibly be considered an electioneering communication.

Finally, the determinations contained herein were not based on whether the complaint was filed in a timely fashion, but some discussion of timeliness is appropriate. Section 2.54.050(B)(1) Enforcement provides that "[a]ny person who believes that a violation of this Chapter has occurred may file a written complaint with the City Clerk no later than one hundred twenty (120) days after the date of filing of the report containing the alleged violation." This office acknowledges that Section 2.54.050(B)(1) references filings that were actually made, while the allegation in this case is that required filings were not made. However, this Section has previously been interpreted to constitute a period of one hundred twenty (120) day within which to file a complaint. The complaint in this matter was filed on February 27, 2020, outside of the 120-day filing period. Consequently, in addition to the substantive reasons for dismissal cited above, this Office finds that the complaint is also subject to dismissal because some or all of the allegations are time-barred.

In conclusion, I have determined that the alleged campaign finance violations in Exhibits 1-8 are groundless because no reasonable person could conclude that any of those exhibits constitute electioneering communications as defined under Colorado law. In addition, the alleged campaign finance violation in the unnumbered exhibit is frivolous regardless of the contents, because the alleged electioneering communication occurred well after the election in question. Accordingly, I hereby determine the entire complaint to be groundless and/or frivolous pursuant to Section 2.54.050(B)(1), and is therefore subject to dismissal.

Sincerely,

A handwritten signature in blue ink that reads "Michele Millard". The signature is fluid and cursive, with a large loop at the end.

Michele Millard
City Clerk

CC: Glenn Wallace
Jerry Healey