

N.D.A.G. Letter to Meier (Oct. 13, 1986)

MEMORANDUM

TO: Secretary of State Ben Meier

FROM: Nicholas J. Spaeth, Attorney General

RE: Disclaimers Upon Political Advertisements

DATE: October 13, 1986

For many years, North Dakota law required political disclaimers to appear on all political advertisements regardless of the form in which the advertisement appeared or the thrust of the statements contained within the advertisement. In 1978, our North Dakota Supreme Court struck down this particular statute as a violation of the constitutionally guaranteed freedom of speech. State of North Dakota Education Assn., 262 N.W.2d 731 (N.D. 1978). The court noted that the statute was overly broad and applied to all political advertisements as opposed to those advertisements "designed to injure or defeat any candidate for nomination or election by reflecting upon his personal character or political action."

In 1981, the North Dakota Legislature amended the political advertisement disclaimer law to its current form as found at N.D.C.C. § 16.1-10-04.1. The current statute states that every political advertisement by newspaper, pamphlet, or folder, display card, sign, poster, or billboard, or by any other public means, on behalf of or in opposition to any candidate for public office, designed to assist, injure, or defeat the candidate or by reflecting upon the candidate's personal character or political action, must disclose at the bottom of the advertisement the name or names of the sponsors of the advertisement as well as the name or names of the person, associations, or partnership paying for the advertisement. This statute specifically exempts campaign buttons.

The conclusion to be drawn from the current political advertisement disclosure statute is that political advertisements by themselves do not require disclaimer statements. Instead, only those advertisements which are on behalf of or in opposition to any candidate for public office which are further designed to assist, injure, or defeat the candidate by reflecting upon the candidate's personal character or political action must contain the disclaimers. In other words, a political advertisement which -states "vote for me" does not require a disclaimer statement as it is not designed to assist, injure, or defeat a candidate by reflecting upon the candidate's personal character or political action. However a political advertisement which states "vote for me because I am a good person" or "vote for me because the other guy is a bad person" does require a disclaimer as it does satisfy the statutory requirements found within N.D.C.C. § 16.1-10-04.1.

I hope this memo has been of some help in clarifying the current status of the political disclaimer law. If you have other questions, please do not hesitate to contact me.

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