

*Special Committee on Judicial Election Campaign Intervention
2018 Judicial Elections*

2018-01 Opinion

The Special Committee on Judicial Election Campaign Intervention received a request for an opinion on the following issue:

Whether small promotional items, such as fingernail files, personal fans, stickers, cups, t-shirts, yard-signs, table runners, and balloons are considered “materials” under the Mississippi Election Code such that they have to state that they are paid for by the committee to elect the candidate or approved by or distributed by the candidate as required in Miss. Code Ann. § 23-15-1025. Also, does a large wooden road sign or banner constitute materials such that it must have the required language?

The term “materials” is not defined under the Code. Additionally, please provide a formal opinion as to what the Special Committee considers to be material. I see a distinction between promotional items and material that is submitted providing information about the candidate.

The Special Committee has determined that this issue presents a question of sufficient general interest and importance. As a result, the Special Committee had decided to issue the following formal opinion.

There are two statutes that relate to the purchase and distribution of “Campaign Materials.” First, Mississippi Code Annotated section 23-15-1025 provides:

Distribution of campaign materials.

If any material is distributed by a judicial candidate or his campaign committee or any other person or entity, or at the request of the candidate, his campaign committee or any other person or entity distributing the material shall state that it is distributed by the candidate or that it is being distributed with the candidate's approval. All such material shall conspicuously identify who has prepared the material and who is distributing the material. The identifying language shall state whether or not the material has been submitted to and approved by the candidate. If the candidate has not approved the material, the material shall so state. The identity of organizations or committees shall state the names of all officers of the organizations or committees. Any person, who violates the provisions of this section, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of One Thousand Dollars (\$1,000.00) or by imprisonment for six (6) months or both fine and imprisonment.

Second, the Mississippi Legislature recently amended Mississippi Code Annotated section 23-15-897:

Certain information to be included in campaign materials; compliance with section for campaign materials published on electronic platform.

(1) The following words and phrases shall have the meanings as defined in this section unless the context clearly indicates otherwise:

- (a) “Campaign materials” include any materials designed to influence voters for or against any candidate, party or measure to be voted on at any election, or containing information about any candidate, party or measure paid for by a candidate, political committee, or independent expenditure which requires disclosure under campaign finance laws.
 - (b) “Publish” means the act or instance of making campaign material available to the public, or to a list of subscribers, by mail, telephone, electronic communications platforms, Internet, software applications, printed materials or any other means of distribution.
 - (c) “Printed material” shall include, but not be limited to, any notice, placard, bill, poster, dodger, pamphlet, advertisement, sign or any other form of printed publication, except notices, posters and the like, which simply announce a speaking date and invite attendance thereon.
- (2) No candidate, political committee or other person shall publish, or knowingly cause to be published, any campaign materials unless it contains the following information:
- (a) The name of the candidate along with a statement that the message is approved by the candidate; or
 - (b) If the message has not been approved by a specific candidate, the name of the person, political committee or organization paying for the publication of the message; or
 - (c) If the message has not been approved by the candidate and no person, political committee or organization is identified as having paid for the publication, the entity producing the campaign materials must be identified.
- (3) Publication of campaign materials through an electronic platform shall be deemed to comply with the requirements of this section if the home page of the candidate or political committee provides the information required by subsection (2), and each electronic publication provides a link to that home page.

The Special Committee is of the opinion that the definition of “Campaign Materials” in section 23-15-897(1)(a) also defines the term “material” in section 23-15-1025. Thus, Campaign Materials include: push cards, pamphlets, circulars, handbills, personal fans, sample ballots, bumper stickers, advertisements, signs (including signs for display on motor vehicles or in yards), billboards, banners, direct mail or other commercially printed items.

The Special Committee is also of the opinion that the inclusion of the language “approved by the candidate” is sufficient to indicate the material was submitted to the candidate, approved by

the candidate, and paid for/distributed by either the candidate or the candidate's committee as the disclaimer.

However, the question submitted asks about very small promotional items where it is impossible or impractical to include the disclaimer language of section 23-15-1025 or section 23-15-897. The Special Committee is of the opinion that very small Campaign Materials may be purchased and distributed, without the required disclaimer. Examples of such items include:

- fingernail files,
- apparel stickers,
- buttons, pins, and campaign jewelry,
- pens and pencils,
- matchbooks,
- balloons,
- clothing,
- cups and water bottles,
- bank account checks and
- similar small promotional items.

If the disclaimer is not included on any such very small promotional item, it is the responsibility of the candidate and the candidate's committee to ensure that such items only identify the candidate and the position sought, are paid for by the committee and are properly reported on campaign finance reports. Further, a candidate or committee may *not* cooperate or coordinate with any person or entity to purchase or distribute such items to avoid reporting a campaign contribution/expense or to communicate false or misleading information.

This opinion is limited to the scope and authority of the Special Committee under the Mississippi Code of Judicial Conduct. The Special Committee expresses no opinion as to the imposition of criminal prosecution under this section 23-15-1025.

Any questions should be in writing and directed to:

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