

DRAFT

ALBUQUERQUE BOARD OF ETHICS AND CAMPAIGN PRACTICES

ADVISORY OPINION #AO 01-2025

April 22, 2025

QUESTION: Does Part 18(A)(1)(a)(i)(b) of the City’s 2025 Rules for the Election Code and the Open Ethical Election Code of the City Charter (“Rules”) require identification of the printer or publisher for electronic billboard advertisements by a Measure Finance Committee related to the 2025 Albuquerque mayoral race?

CONCLUSION: On the facts presented, the digital billboard advertisements at issue are subject to Part 18(A)(1)(a)(i)(b) of the Rules, but those requirements are here satisfied by inclusion of the name and address of the Measure Finance Committee that created the advertisements where the billboard frame has indicia of the billboard’s ownership.

BACKGROUND:

Safer Albuquerque Committee, a measure finance committee, has requested this advisory opinion to seek clarification regarding the disclaimer requirements for an electronic billboard advertisement related to the 2025 Albuquerque mayoral race. The Committee seeks to purchase advertising on an electronic billboard operated by Clear Channel. Part 18(A)(1)(a)(i)(b) of the Rules requires that printed campaign materials contain a disclaimer including the “name and address of the establishment that printed or otherwise created the campaign materials.”

Clear Channel does not want its name included in the advertising. According to the Committee, Clear Channel claims that: 1) it is not “printing” materials, it is simply uploading advertising created by the Committee to Clear Channel’s digital billboards; 2) the Clear Channel name and logo is already visible on the billboard frame; and 3) Clear Channel wants to avoid any implication that it is endorsing or is in any way affiliated with a political campaign or committee.

ANALYSIS:

State law, the City Charter, and the Rules all include disclaimer requirements, but only the Rules include the requirement that the printer be identified in disclaimers, and the Rules limit that requirement to “Printed Campaign Materials.” The question is thus whether an advertisement digital billboard constitutes “Printed Campaign Materials.”

State Law

The Campaign Practices Act (Chapter 1, Article 19 NMSA 1978)¹ includes a disclaimer requirement, but does not mention the printer or publisher:

¹ “The conduct of municipal elections is governed by this Chapter, the State Election Code, the Local Election Act, and the City Charter, as any of them are amended and supplemented from time to time.” Albuquerque Ord. § 2-4-3

A person who makes a campaign expenditure, a coordinated expenditure or an independent expenditure for an advertisement in an amount that exceeds one thousand dollars (\$1,000), or in an amount that, when added to the aggregate amount of the campaign expenditures, coordinated expenditures, and independent expenditures for advertisements made by the same person during the election cycle, exceeds one thousand dollars (\$1,000), shall ensure that the advertisement contains the name of the candidate, committee or other person who authorized and paid for the advertisement.

NMSA 1978, § 1-19-26.4(A) (2024). An “advertisement” is a “communication referring to a candidate or ballot question that is published, disseminated, distributed or displayed to the public by print, broadcast, satellite, cable or electronic media, including recorded phone messages, or by printed materials, including mailers, handbills, signs and billboards” NMSA 1978, § 1-19-26(A) (2024). The Secretary of State has additionally promulgated a regulation governing disclaimers, which, like the statute, does not refer to the publisher or printer of an advertisement. *See* 1.10.13.31 NMAC (discussing “[t]he disclaimers on campaign advertising mandated by Section 1-19-26.4 NMSA 1978”); *see also* 1.10.13.31(D) NMAC (“The disclaimer statements required for advertisements contained in paragraph A of this section shall clearly state the name of the candidate, committee or other person who authorized and paid for the advertisement.”).

Municipal Law

The Election Code requires disclaimers on campaign materials as follows:

(a) *Campaign Materials*. Each candidate and each chairperson of each Measure Finance Committee shall ensure that an image of all broadly distributed campaign material used in the campaign is filed with the City Clerk’s Office on or prior to the day the financial report disclosing the expenditure for said campaign materials is due. Campaign materials shall be filed electronically in a manner prescribed by the City Clerk. If the campaign material is a video or radio broadcast, a copy of the video or radio broadcast shall be uploaded or a link to a copy of the video or radio broadcast shall be sent directly to the City Clerk and the Independent Auditor.

(b) *Required Disclaimers*. Each candidate and each chairperson of each Measure Finance Committee shall ensure that all campaign materials display a clear and conspicuous disclaimer stating information on how the material was paid and any additional information as required by the rules promulgated by the City Clerk.

Albuquerque Charter, art. IX, § 5 (2022). “Campaign Materials” is a defined term meaning “any published, printed or broadly distributed campaign advertising or communications such as newspaper advertisements, handbills, petitions, circulars, letters, radio or TV broadcasts, cable distributions, social media sites, websites, electronic or telephonic transmissions or similar written material used in a campaign by a candidate or a Measure Finance Committee.” Albuquerque Charter, art. IX, § 2(d) (2024). “Disclaimer” is also a defined term, meaning “a

(2022); *see also* NMSA 1978, § 1-1-1 (1975) (including all of Chapter 1 NMSA 1978 in the “Election Code”); NMSA 1978, § 1-22-3(D) (2019) (“Except as otherwise provided in the Local Election Act, local elections shall be called, conducted and canvassed as provided in the Election Code.”).

notice that identifies the person(s) or organization(s) who paid for a communication and whether the communication was authorized by one or more candidates.” Albuquerque Charter, art. IX, § 2(*l*). (2024).

The City Clerk has promulgated rules as contemplated by Article IX, Section 5:

A. Required Disclaimers

1. The following disclaimers are required on all campaign materials broadly distributed in support or opposition of a candidate or ballot measure:

- a. Printed Campaign Materials

- i. Each candidate and each chairperson of each Measure Finance Committee shall **ensure that all printed campaign materials specify:**

- (a) The name of the campaign or committee that authorized the printing or distribution of such material.

- (b) The name and address of the establishment that printed or otherwise created the campaign materials. The following exceptions include:

1. The name and address of the printing establishment is not required to be specified in a newspaper advertisement.

2. If the campaign prints the materials, the disclaimer must state “**printed in-house.**”

- (c) Printed disclaimers **must be in black text on a white background.**

- ii. Examples of printed materials include but are not limited to:

- (a) Flyers

- (b) Posters

- (c) Mailers

- (d) Billboards

- (e) Banners

- (f) Brochures

- (g) Business Cards

(h) Yard Signs

b. Broadcast Campaign Materials

- i. For Audio Broadcasts: The disclaimer shall be spoken at the end of the communication. The audio statement must be read in a clearly spoken manner with pitch and tone substantially similar to the rest of the advertisement.
 - ii. For Video Broadcasts: The disclaimer shall be printed in **black text on a white background**. The text must appear in letters equal to or greater than **4% of the vertical picture height**.
- c. All disclaimers must be clear and conspicuous regardless of the transmission medium. A disclaimer is not clear and conspicuous if it is difficult to read or hear, or if the placement is easily overlooked. **Disclaimers must use a font size that is readable by the average viewer.**

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D. In-Kind Contributions of Printed Materials

1. In-Kind Contributions of printed materials used or distributed by a candidate, Measure Finance Committee, political committee, or other entity must include the name or title of that candidate, Measure Finance Committee, political committee, or political action committee as the authorizing agent for the printing and distribution of the In-Kind Contribution

E. Telephone calls, text messages, emails, websites, and social media posts

1. Prerecorded automated telephone calls, scripted live telephone communications, **text messages**, emails, **websites**, and **social media** posts [that] name a clearly identified candidate must include:
 - a. A disclaimer clearly identifying the **name of the person, candidate, or committee** who made or financed the Expenditure for the communication.

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5. For Paid or Boosted Social Media Advertisements

- a. Posts, comments, or other communications made via social media must include an **“Ad paid for by” disclaimer**.
- b. The disclaimer must be displayed in no less than **10-point font** on each individual post that serves as an advertisement.

6. For committees other than the candidate, the name of the committee in the disclaimer may be shortened to uniquely identify the committee.

Rules, Part 18, at 39-42 (emphasis in original). The disclaimer rule also includes exceptions not material to this analysis. *See id.* at 42-43.

Although Part 18(A)(1)(a)(ii) provides a nonexhaustive list of examples of printed materials, the Rules do not expressly define “printed.” However, although digital billboards are not conventionally “printed,” the inclusion of “billboards” as an example of “printed materials,” *see id.* suggests that even digital billboards should be considered “printed materials” and thus must disclose “the name and address of the establishment that printed or otherwise created the campaign materials.” *See* Rules, Part 18(A)(1)(a)(i)(b).

Because Clear Channel did not create the materials and did not “print or otherwise create[]” the materials, however, the requirements of the rule are satisfied by identification of the name and address of the Measure Finance Committee, as the establishment that “otherwise created” the materials. Moreover, to the extent that the Rules could be read to imply a requirement that the billboard owner be disclosed, that purpose is served by Clear Channel’s branding of its digital billboard frames.

The Board thus advises that the digital billboards at issue need to disclose the name and address of the Measure Finance Committee, but the digital content displayed need not identify the billboard owner when the billboard has visible indicia of ownership of the billboard itself.