



October 17, 2007

Honorable Mayor and Members of City Council
City of Centennial
12503 E. Euclid Drive, Suite 200
Centennial, Colorado 80111

RE: False Campaign Materials

Dear Mayor Pye and Members of City Council:

During the City Council meeting of October 15, 2007, the City Council and a citizen raised the question of whether a candidate for elective office in the City of Centennial may publish a false statement in campaign literature and whether such falsehood would be actionable under any applicable election law. The Mayor publicly requested that the city attorney research and respond to the question.¹

The question arose from campaign literature recently published and distributed by a candidate for the Ward I City Council position. The campaign literature at issue prominently displays statements concerning the City and its municipal operations. Administrative staff and elected officials expressed belief that many, if not all, of the statements are false. As one example brought to your attention by the City Manager at your public meeting, the campaign literature states "in the past two years the city council increased the city manager's total compensation from \$168,700 to \$262,600." The statement was cited by the City Manager as absolutely false.

The November 2007 municipal election will be conducted as a coordinated election with Arapahoe County. Pursuant to C.R.S. § 1-1-102, the Uniform Election Code of 1992 applies to coordinated elections. Section 1-13-109 of the Uniform Election Code specifically declares as unlawful a candidate's publication or distribution of false or reckless statements in campaign literature and establishes two criminal offenses for this action:

¹ Due to the public nature of the discussion and the request, this response is limited in scope to the applicable law and is not a confidential communication. If the City Council desires further analysis of whether the particular campaign literature violates C.R.S. § 1-13-109 or to instruct the city attorney's office to commence prosecution, I would advise that such discussion and direction be made in executive session pursuant to the Open Meeting Law, C.R.S. § 24-4-402(4)(b). Be advised, however, that any person may submit an affidavit to the Arapahoe County district attorney's office and request prosecution of an election offense in accordance with C.R.S. § 1-13-101.

1-13-109. False or reckless statements relating to candidates or questions submitted to electors - penalties – definitions

(1)(a) No person shall **knowingly** make, publish, broadcast, or circulate or cause to be made, published, broadcasted, or circulated in any letter, circular, advertisement, or poster or in any other communication any false statement designed to affect the vote on any issue submitted to the electors at any election or relating to any candidate for election to public office.

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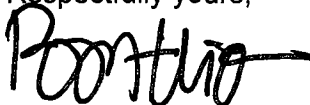
(2)(a) No person shall **recklessly** make, publish, broadcast, or circulate or cause to be made, published, broadcasted, or circulated in any letter, circular, advertisement, or poster or in any other communication any false statement designed to affect the vote on any issue submitted to the electors at any election or relating to any candidate for election to public office. Notwithstanding any other provision of law, for purposes of this subsection (2), a person acts "recklessly" when he or she acts in conscious disregard of the truth or falsity of the statement made, published, broadcasted, or circulated.

Both offenses are classified as misdemeanor criminal offenses. The offense for "knowingly" publishing or circulating false campaign literature is a Class 1 misdemeanor, punishable with a minimum penalty of 6 months imprisonment and/or a \$500 fine. The offense for "recklessly" publishing or circulating false campaign literature is a Class 2 misdemeanor, punishable with a minimum penalty of 3 months imprisonment and/or a \$250 fine.

A violation of C.R.S. § 1-13-109 would be prosecuted by the Arapahoe County District Attorney's Office. In order to commence or initiate prosecution, "any person may file an affidavit with the district attorney stating the name of any person who has violated any of the provisions of [C.R.S. § 1-13-109] and stating the facts which constitute the alleged offense." See C.R.S. § 1-13-101. The district attorney is obligated to "forthwith investigate" a claimed offense of the Uniform Election Code and to prosecute the violator if reasonable grounds exist for prosecution.
Id.

If you require additional information on this matter, please contact me.

Respectfully yours,



Robert Widner
City Attorney
City of Centennial

cc: Jacque Wedding-Scott, City Manager