

ADVISORY OPINION 2015-1

INDIANA ELECTION COMMISSION

COUNTY OF MARION)
)
STATE OF INDIANA) IN RE: INQUIRY CONCERNING
) INDIANA CODE 3-9-3-5 (FALSE REPRESENTATION
) AS AN "OFFICEHOLDER" IN CAMPAIGN
) MATERIALS)

WHEREAS, pursuant to IC 3-6-4.1-25, the Indiana Election Commission may issue advisory opinions as part of the Commission's duty to administer Indiana election laws under IC 3-6-4.1-14(a)(1);

WHEREAS, the Commission reviewed an inquiry to the Election Division dated July 14, 2014 concerning whether a candidate must use words or phrases such as "elect", "vote", or "for", in campaign materials to comply with the requirement under Indiana Code 3-9-3-5 that a person not knowingly or intentionally authorize, finance, sponsor, or participate in the preparation, distribution, or broadcast of paid political advertising or campaign material that falsely represents that a person is or has been an "officeholder" (as defined by that statute);

WHEREAS, the Commission, upon duly considering this matter, has determined that the adoption of an advisory opinion by the Commission will benefit the administration of Indiana election laws;

IT IS THEREFORE ORDERED:

SECTION 1. This Advisory Opinion applies to a person subject to Indiana Code 3-9-3-5.

SECTION 2. Indiana Code 3-9-3-5 which provides that

"Sec. 5. (a) This section does not apply to the following:

(1) A communication relating to an election to a federal office.

(2) A person whose sole act is, in the normal course of business, participating in the preparation, printing, distribution, or broadcast of the advertising or material containing the false representation.

(b) As used in this section, "officeholder" refers to a person who holds an elected office.

(c) A person may not knowingly or intentionally authorize, finance, sponsor, or participate in the preparation, distribution, or broadcast of paid political advertising or campaign material that

falsely represents that a candidate in any election is or has been an officeholder."

does not require that advertising or campaign material include words or phrases such as "elect", "vote", or "for", in campaign materials to comply with IC 3-9-3-5. Specifically, advertising or campaign material containing text such as "John Doe County Assessor",

for example, does **not** require inserting these words or phrases so that the communication would read "*Elect John Doe County Assessor*" or "*John Doe for County Assessor*" for the communication to comply with IC 3-9-3-5.

SECTION 3. In providing advice and instruction to candidates, political parties, county election boards, and other interested persons regarding the issues addressed by this order, the Election Division shall refer to this Order and advise candidates, political parties, county election boards, and other interested persons to proceed accordingly until the matter is addressed by the Indiana General Assembly.

SECTION 4. The Commission respectfully recommends to the Indiana General Assembly that the policy set forth in this Advisory Opinion be codified by enacting appropriate remedial legislation.

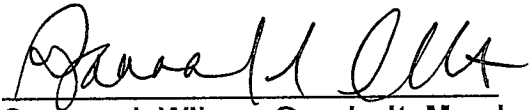
SECTION 5. The Commission directs that the Election Division promptly forward a copy of this Advisory Opinion to each county election board, and to the State Chair of the Democratic Party, Libertarian Party, and Republican Party.

ISSUED THIS THE 21st DAY OF July, 2015:

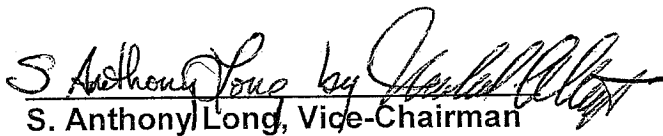
THE INDIANA ELECTION COMMISSION:



Bryce H. Bennett, Jr., Chair



Suzannah Wilson Overholt, Member



S. Anthony Long, Vice-Chairman



Zachary E. Klutz, Member