

**Utah Ethics Opinions**

**1978.**

**46.** USB EAOC Opinion No. 46

Utah State Bar

Ethics Advisory Opinion No. 46

Approved July 28, 1978

**Summary:** An attorney candidate for political office may not use endorsement statements of a judge. But an attorney may use an endorsement of a former client if it is used for the sole purpose of garnering votes and if the endorsements are done in a dignified manner.

**Facts:** The question of ethically proper political advertisements for attorney candidates has been presented to the Ethics Committee. The proposed political advertisement is a brochure which would contain two endorsement statements for the attorney candidate for county attorney. The two statements are preceded by the heading "A Competent (sic) Attorney." The first statement, from one of the attorney's former clients, reads as follows:

Mr. \_\_\_\_\_ as my attorney, has won for me one case against \_\_\_\_\_ and \_\_\_\_\_ and was instrumental in winning a favorable decision on another sizeable law suit. My experience with \_\_\_\_\_ as my legal counsel convinces me that he has impressive exceptional competence (sic) as an attorney and I strongly support, endorse and recommend him as a candidate for \_\_\_\_\_ County Attorney.

(Name of endorser)"

The second endorsement statement ends with the name of a state court judge and reads as follows:

"It is my impression that in the case of \_\_\_\_\_ you have made a significant contribution to the law of this state. It provided a basis for establishing the principle that . . .

(Name of judge and judicial position)"

**Opinion:** At issue herein, are the proscriptions and allowances of Canon 2 in relation to lawyer advertising and solicitation in the realm of political activity of attorneys. Disciplinary Rule 2-101 delineates the parameters of permissible lawyer advertising. Ethical Consideration 2-9 sounds a cautionary note in the material which can be included in attorney advertising as follows:

"Examples of information in lawyer advertising that would be deceptive include misstatements of fact, suggestions that the ingenuity or prior record of a lawyer rather than the justice of the claim are the principle factors likely to determine the result, inclusion of information irrelevant to selecting a lawyer, and representations concerning the quality of service, which cannot be measured or verified."

Under this guideline, the two endorsement statements would obviously be unethical if included in an attorney advertisement. However, the situation of political activity is somewhat different. DR 2-101(F) states that "This rule does not prohibit limited and dignified identification of a lawyer as a lawyer as well as by name;

1. In political advertisements when his professional status is germane and to the political campaign or to a political issue."

It seems self-evident that a candidate for the office of county attorney can, under the above cited rule, identify himself as a lawyer.

In Informal Decision 656 (1963), the ABA Ethics Committee found that it was proper for an attorney candidate for political office to send letters on his letterhead to prospective voters soliciting their votes and also that it was permissible for such a candidate to distribute campaign literature including his picture and a statement of his legal background. The opinion went on, to state that "under Canon 27 every form of solicitation, direct or indirect, for professional employment is improper. However, in Formal Opinion 74 of this committee, it was held that appointment or election to public office was political, and that neither Canon 27 nor any other Canon prohibits the solicitation of such office when done in a dignified manner." (emphasis added) Thus, an attorney political candidate may be interviewed on television and may run newspaper ads for his candidacy. Also, such political advertisements may include the endorsements of other attorneys. Such advertisements are not unethical.

"The advertisements should be signed by the lawyers as individuals and not with their firm names; no addresses or other identifying data should be given; and the group as a whole should be described merely as a group which supports the named candidate without singling out any particular individuals in it, although if the group consists exclusively of lawyers it may be so designated." Informal Decision 825 (1965).

The question if whether or not the political literature of the candidate can include endorsing statements of a judge, can be simply resolved. In Informal Decision C-719 (1964) the

Canons of Judicial Ethics were examined, in particular, Judicial Canon 28. It was noted that a judge can engage in some types of political activity but that he "should avoid . . . the public endorsement of candidates for political office. . . he should neither . . . engage generally in partisan activities." In the situation herein, the office of county attorney is a partisan office. Thus, by implication the judge in this situation is endorsing not only a particular lawyer candidate, but also his political party. A judge should refrain from approving use of his name or endorsement in any such activities. Informal Opinion 818 (1965) addressed the question of the ethical propriety of an attorney soliciting such an endorsement. In that opinion the situation involved advertisements implying that the judiciary of the state approved this candidate. The Ethics Committee found the advertisement to be unethical and stated as follows:

"Judges should not be engaged in politics except to the extent permitted when a judge himself is a candidate for office and a lawyer should not encourage or promote an activity on the part of judges in which it is unethical for judges to participate. We think that the entire make-up of the advertisement is such that it implies that the judges are for the candidate. It is unethical for a lawyer to cause judges to participate in a lawyer's political advertisements that judges are for a certain candidate. This, we consider the advertisement does, and we therefore, consider it to be improper."

The question of the property of the endorsement statement by the former client is more difficult. Clearly, an attorney candidate can disclose the fact that he is an attorney and can give some background information so long as it is "dignified." A somewhat analogous fact situation was presented in Informal Opinion 795 (1965). An attorney candidate wished to state in his campaign literature that he had performed "free legal services for various people and for organizations" and that he "has never turned down a client on the grounds of impecuniosity or inability to pay a fee." The Committee found that it was improper to include the names of any particular persons or organizations he had represented as that would breach the attorney-client confidential relationship. However, they found the ad to be permissible in all other respects, though they questioned its efficacy. The Committee found that such advertisements were ethical "so long as the new releases have the objective of furthering the candidacy and are not motivated by the purpose, directly or indirectly, of obtaining professional employment." It is difficult for this Committee to determine what the motive is in including the quoted endorsement statement in the candidate's literature. He assures us that it is purely for the purpose of obtaining votes. Of course, we can acknowledge that professional expertise is germane to the election of county attorney.

The Committee is called on to make another subjective

judgment in addition to that of motivation, that being whether or not the proposed endorsement statement is "dignified." In the opinion of this Committee, the reference to specific adversaries in specific law suits is not dignified and goes beyond the parameters of DR 101(F) and the ethical opinions rendered by the ABA and crosses into the realm of unethical solicitation of legal business. The portion of the statement speaking generally of the attorney candidate's abilities however, are not found to be improper.

In conclusion, this Committee finds that the statement of endorsement by a judge is in its entirety, unethical. The endorsement statement of the client is proper only where it refers in general terms to the attorney's abilities but not where it refers to specific law suits or parties.

Rule Cited:

Canon 2