

Discipline, Interpretation, and Enforcement (DIE) Board

Ruling of the Board

(1) HEARING DETAILS

Style of Cause: Dehod v. CRO
Hearing Number: Ruling #5, 2008/2009
Hearing Date: February 24, 2009
Jason Morris, Chief Tribune, Chair
DIE Board Panel Members: Amy Sanderson, Tribune
Ashvin Singh, Tribune
Appearing for the Applicant: Justin Benko
Nick Dehod
Appearing for the Respondent: Patrick Wisheu, Chief Returning Officer
Intervener(s): None

(2) ALLEGED CONTRAVENTION / INTERPRETATION QUESTIONS

Chief Returning Officer Wisheu refused to approve a rubber stamp that had been created for the purpose of Nick Dehod's campaign for Vice President Student Life. This was done under the authority of Bylaw 2000, s. 39(1). The grounds for refusal was that the stamp met the test under Bylaw 2000, s. 40(1)(c), that it was "likely to permanently damage or alter property."

In order to address this matter, the Board has decided to address the following issues:

1. Is the stamp a "campaign material" as contemplated by Bylaw 2000?
2. If the answer is "yes", does the stamp meet the test of Bylaw 2000, s. 40(1)(c)?

(3) RELEVANT LEGISLATIVE PROVISIONS

Bylaw 2000 reads (excerpts):

2. Definitions

In this bylaw

...

u. "campaign materials" shall be any physical or electronic media produced or distributed as part of campaign activities;

...

39. Campaign Materials

(1) All campaign materials shall be approved in form, content, and cost by the C.R.O. before they may be used in campaign activities.

(2) Candidates, sides and slates wishing to have campaign materials approved shall provide the C.R.O. with

- a. a written estimate of the cost of the proposed campaign material, including the source of that cost; and

- b. the complete contents of the proposed campaign material, including text, images and layout.

...

40. Forbidden Campaign Materials

- (1) The C.R.O. shall not approve campaign materials that
 - a. have more than a nominal value when distributed;
 - b. cannot be removed at the end of the Campaign; or
 - c. are likely to permanently damage or alter property.

(4) ANALYSIS

The Board has come to the conclusion that a stamp is a campaign material and requires approval under Bylaw 2000 s. 39, but that merely by virtue of being a stamp it does not violate Bylaw 2000 s. 40(1)(c).

(4.1) Is a Stamp a “Campaign Material”?

Given the definition of “campaign material” above, the question here is whether or not a stamp is physical media. The Board is compelled that because the stamp carries and is capable of reproducing a campaign message, it is physical media. We believe that this is consistent with the intent of Students’ Council in ensuring that the “form, content, and cost” of campaign materials undergo scrutiny.

An argument was put forward that a stamp is not significantly different from a pen, in that it is merely used to put ink on paper. That it is a particularly specialized sort of pen, goes the argument, should not make any difference. This is essentially an argument against including a “stamp” in the definition of “physical media.” We do not find it compelling. A stamp is created with a specific message, and is designed to communicate that message only.

(4.2) Does a stamp violate Bylaw 2000 s. 40(1)(c)?

We begin in looking at the words of s. 40(1)(c).

The C.R.O. shall not approve campaign materials that are likely to permanently damage or alter property.

The C.R.O. in his submissions argued that a stamp is likely to permanently alter property. Indeed, he submits, that is a stamp’s primary function. The Board agrees that on the face of the words of the Bylaw, a stamp would be likely to permanently alter property. However, we find the consequence of that literal interpretation to be absurd.

It seems to the Board that the purpose of s.40(1)(c) is to prevent unwanted damage to or alteration of property as a result of campaign activities. Examples of the sort of material that the Board imagines this section was designed to restrict might include certain types of adhesives, and spray painting.

The applicant maintains that it is their intent to use the stamp by stamping students' property with their consent. Again, we do not see how this activity would violate any of the purposes expressed in Bylaw 2000. Because the stamp is capable of creating only one sort of impression, and because impressions of ink on paper from a rubber stamp are of negligible monetary value, approval of the stamp ensures that the "form, content, and cost" of the materials are being monitored.

If it is possible with some minor change to a literal interpretation of a bylaw to avoid absurd outcomes yet maintain consistency with all express purposes of the bylaw, such an interpretation is to be preferred.

In this case, the Board is of the opinion that s.40(1)(c) should be understood to read as follows: "The C.R.O. shall not approve campaign materials that are likely to permanently damage or alter property without the consent of the property owner."

(5) DECISION

We answer the issues listed above as follows:

1. Is the stamp a "campaign material" as contemplated by Bylaw 2000?

Yes.

2. If the answer is "yes", does the stamp meet the test of Bylaw 2000, s. 40(1)(c)?

No.

Because we are unaware of any outstanding objection to the approval of the stamp by the C.R.O., the stamp in question is deemed approved as required under Bylaw 2000 s. 39(1), subject to being used in the manner described to the C.R.O. in accordance with that section.

The Discipline, Interpretation, and Enforcement (DIE) Board functions as the judicial branch of the Students' Union, and is responsible for interpreting and enforcing all Students' Union legislation. Please direct all inquiries regarding the DIE Board or this decision to the Chief Tribune at: <ea@su.ualberta.ca>.