

DIE Board Ruling # 05 2013/2014

HEARING DETAILS:

Style of Cause: Woods vs Lau/CRO

Hearing Date: March 5th, 2014

Hearing Number: Ruling #05 2013/2014

DIE Board Panel members: Harvir Mann, Associate Chief Tribune, Chair
Cian Hackett, Associate Chief Tribune
Zafir Kanji, Tribune

Appearing for the Applicant: Adam Woods, Applicant

Appearing for the Respondent: William Lau, Respondent
Mario Babic, Agent

BACKGROUND:

Candidate Lau injured his ankle during the pre-campaign period and was provided a motorized scooter by Specialized Support and Disability Services (SSDS) for the purposes of compensating for his injury. The Chief Returning Officer (CRO) approved the request and also gave permission for Mr. Lau to affix campaign materials to his scooter in his campaign for SU President by accepting the scooter as an extension of himself (CRO Ruling #9). According to this ruling, he was determined to not be in contravention of Bylaw 2200 section 45 concerning services provided to candidates and charging fair market value in return.

Candidate Woods, running against Mr. Lau in the election, sought to appeal the CRO's ruling and requested clarification of Mr. Lau's use of his scooter for campaign activities. Mr. Woods claimed in his application for a hearing that Mr. Lau's scooter was used in campaign activities beyond personal mobility. A campaign activity is defined by Bylaw 2200 as "any act, planned or organized by or on behalf of any candidate or side that is calculated to convince members in a certain way." Evidence submitted by Mr. Woods included two pictures posted on Facebook depicting students sitting on his scooter with a campaign sign affixed to the front reading "Lau for Life." One picture in particular, uploaded by one of Mr. Lau's volunteers, came with the accompanying text: "Who wants a ride in the #Laumobile? Share this picture and you can be the next lucky person to roll in this beauty." Mr. Woods and his campaign volunteers also claimed to see Mr. Lau's volunteers operating his scooter around campus with campaign signage affixed to the front.

Mr. Woods believes these actions constitute attempts to sway voters in a particular way, beyond the use of his scooter for personal mobility. While he believe Mr. Lau has the right to affix campaign materials to his scooter and use it to compensate for his injury, he feels it is being unfairly used as a resource for campaign activities and he should be charged fair market value for its use, as cited in Bylaw 2200 section 45 subsection 1.

According to Mr. Lau and his agent, his campaign never intentionally utilized his motorized scooter for the purposes of campaigning. In their opinion, all activities and pictures taken with his scooter were done in playful jest rather than a serious attempt at swaying voters. In regards to the pictures, Mr. Lau argued that they were uploaded without his consent. According to Mr. Woods, the pictures were posted on Thursday February 27th by one of Mr. Lau's supporters. When Mr. Lau received a notification from the DIE Board for hearing on Monday March 3rd he subsequently took the pictures down. His agent mentioned that all activities concerning his scooter were unplanned and he could not control individuals wishing to take pictures with his scooter. Mr. Lau reasoned that he never explicitly advertised scooter rides as a means of campaign activity and should not be held accountable for the actions of his supporters without his knowledge. Instead, Mr. Lau argued that he was placed at a disadvantage by his injury and lack of mobility in comparison to other candidates.

Mr. Woods countered that such activities were not necessarily unplanned since individuals other than Mr. Lau were using a resource sanctioned only to Mr. Lau by SSDS. In his opinion, riding a scooter with Mr. Lau's promotional materials attached constituted solicitation and merited a decision from the DIE Board.

ISSUES:

- [1] Should the CRO's decision in Ruling #9 be upheld?
- [2] If Mr. Lau's scooter activities are considered a campaign resource, should he be charged fair market value for its use?
- [3] If Mr. Lau is found in violation of Bylaw 2200 section 45, what fine should he be subjected to?

RELEVANT BYLAWS:

- [4] **From Bylaw 2200 Section 27:**

27. Third Party Activities

(1) A candidate or side in a Students' Union election may distance themselves from a third party in the event the third party effectively conducts campaign activities under the following conditions:

- a. the candidate or side must demonstrate to the C.R.O. that the third party acted without consent of the candidate or side; and*
- b. the candidate or side must demonstrate to the C.R.O. that steps have been taken to distance themselves from the third party and to attempt to halt unauthorized campaign activity by that third party.*

(2) Should a candidate or side demonstrate the conditions specified under Section 27(1) to the C.R.O.'s satisfaction, the candidate or side would not be subject to punitive fines as a result of the third party's actions, but could still be subject to counterbalancing fines.

[5] From Bylaw 2200 Section 31:

31. Restrictions on Campaign Activities

(1) No candidate or side shall, without the permission of the C.R.O. engage in any campaign activity

- a.in any business or service operated by the Students' Union;*
- b.in a University library;*
- c.in a classroom during a class unless he/she first obtains the permission of the professor responsible for that class;*
- d.in any residence; or*
- e.in any building or on any land not owned or operated by the University or the Students' Union.*

[6] From Bylaw 2200 Section 32:

32. 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 and side wishing to have campaign materials approved shall

provide the C.R.O. with 2200 (12)

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.

(3) The C.R.O. shall provide in confidence a written approval or refusal of campaign materials within eight (8) working hours of receiving a request as set out in Section 32 (2).

[7] **From Bylaw 2200 Section 45:**

45. Fair Market Value

(1) Where a product or service has been provided to a candidate or side for no consideration or for consideration that is less than the official list price of the service provider, that candidate or side shall be considered to have incurred a campaign expense at the fair market value of that product or service, as determined by the C.R.O.

DECISION:

The panel was unanimous in their decision.

[8] The Panel finds that Mr. Lau violated Bylaw 2200 section 45 subsection 1, by failing to provide fair market value for a service unintentionally used as a campaign resource.

[9] The Panel finds that although Mr. Lau never intended to his scooter as a campaign tool beyond its use for personal mobility, his volunteers did and one of the pictures posted on social media unfairly provided an advantage to his campaign. This act clearly connected the scooter with Mr. Lau's campaign beyond its approved role as Mr. Lau's personal mobility device, and hence constitutes a form of solicitation of campaign support.

[10] Mr. Lau admitted the mistake and the picture was from Facebook once he became aware of the transgression. Though the violation was done by one of his volunteers, Mr. Lau recognizes his responsibility for Third Party Activities as outlined in Bylaw 2200 section 27 subsection 1.

[11] Since Mr. Lau took steps to halt unauthorized activity by the third party, he will not be subject to punitive fines but will be subject to counterbalancing fines (Bylaw 2200 section 27 subsection 2). In light of the fact that Mr. Lau has been paying \$10/day for the use of the scooter for personal mobility, this Panel hereby fines him \$10/day for each of the five days the picture in contention was online, totaling \$50.

[12] This Panel is unable to assess a fine for instances where other volunteers may have been riding on his scooter as these may have occurred on the same days as the aforementioned fine.

The following is the opinion of the Associate Chief Tribune Hackett:

[13] I concur with the decision of the other Tribunes. I would like to add that although I agree that campaign material may be attached to the scooter as an extension of candidate Lau's person, the scooter should only be used for the purposes of his personal mobility while campaign material is affixed to it. Another individual may ride the scooter, however if the scooter is not to be a campaign material, there should be no association with this activity and candidate Lau's campaign.