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CLEARINGHOUSE RULE 96-028

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

a. As the rule is currently drafted, exceptions appear in the various subsections, either by reference to statutory provisions or by substantive language. This is confusing and unnecessary. The board should consider placing all of the exceptions in one subsection.

b. The word “shall” should replace “must” in subs. (1) and (5). The word “the” should replace “such” in subs. (1) and (4). The words “this section” should replace “this rule” in subs. (4) and (5); however, see the next comment regarding sub. (4).

c. The rule should conform to the requirements of the Manual regarding the treatment of definitions. The term, “bona fide poll” is defined in s. EIBd 1.655 (4), although the definition appears to apply to the entire rule, thus requiring placement in a separate definition subsection.

Consideration should also be given to creating definitions for other key terms or clarifying these terms in the substantive provisions. The following terms need clarification: “communication,” “incidental administrative communications,” “message of express advocacy,” “political message,” “political purposes,” “registrant” and “source.” Creating key definitions would permit more effective presentation of the substantive provisions of the rule, which appear to be intended primarily to clarify the requirement of source identification disclosure during telephone calls for a political purpose and, in particular, distinguishing between the disclosure requirements pertaining to a bona fide poll or survey and a fictitious poll or survey that is done for a political purpose. Terms, such as “political purpose” and “registrant” could be defined by cross-reference to the statutory definitions in s. 11.01 (16) and (18m), Stats., respectively. In the process of

creating definitions, consideration should be given to avoiding the use of artificial terms, such as “message of express advocacy.” In this regard, the appropriate use of presently defined terms may eliminate the need to define new terms. For example, the presently defined term “political purpose” incorporates the concept of express advocacy.

d. Section ElBd 1.655 (5) imposes an expense reporting requirement unrelated to the subject of the rule.

e. The term “and/or” is an improper treatment of the conjunction “or.” Since “a or b” means “a or b or both,” only “or” should be used.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Clarity of s. ElBd 1.655 would be improved if it were redrafted to avoid referring to statutory exceptions [e.g., subs. (1), (2) and (4)] and thereby requiring the reader to use two documents to understand the rule. Instead, the rule should assume the reader understands unambiguous statutory requirements and focus on clarifying ambiguous statutory provisions. The substantive provisions should, for example, clarify the source identification requirements that apply to a verbal communication, such as a telephone call, that is made for a political purpose but is disguised as a poll or survey that, if “bona fide,” would be subject to different source identification requirements.

b. Subsection (3) of s. ElBd 1.655 incorporates the concept of time. Thus, it deals with verbal communications, such as television and radio advertisements and telephone calls. Although this is apparent in the second sentence, which deals exclusively with telephone calls, it is not clear in the first sentence, which should be redrafted to emphasize that the provision deals with disclosure requirements in a verbal communication.

c. In s. ElBd 1.655 (1), the term “not” should be substituted for “in no way.”