

Module 4: Third Party Advertising



Third Party Advertising

The *Local Authority Elections Act* (LAEA) now includes provisions regarding third party advertising. Returning officers should review all of Part 8 to ensure they understand the roles and responsibilities of third party advertisers.

What is Third Party Advertising?

Third party advertising is a way for those outside of the candidate's campaign to express support of or opposition to candidates (or to the vote on a question or bylaw) and to try to persuade voters to vote a certain way. The term "third party" in this context is an individual, corporation or group but does not include a candidate. A group can include an unincorporated group of individuals or corporations acting together for a common purpose and includes a trade union and an employee organization, or any combination of individuals, corporations, trade unions or employee organizations.

Third party advertising is separate from any candidate's campaign, and must be done independently from a candidate. Any advertisements or materials that are made and distributed by a candidate or under a candidate's direction are part of the candidate's campaign.

LAEA s.162(1)(d)

Election Advertising

Election advertising includes any transmission to the public by any means of an advertising message during an election advertising period that promotes or opposes the election of a candidate or the vote on a question or bylaw. It also includes canvassing for the benefit of a candidate and organizing events where the purpose of the event is to promote or oppose a candidate.

Election advertising does not include:

- the transmission of any editorial, debate, speech, interview, column, letter, commentary or news;

- the distribution of a book, promotion of the sale of a book, for no less than its commercial value, if the book was planned to be made available to the public regardless of whether there was to be an election;
- the transmission of a document or the communication directly by a corporation or a group to its members, employees or shareholders;
- the transmission by an individual, corporation, group, on a non-commercial basis on the Internet, of the political view of that individual, corporation, group;
- the making of telephone calls to electors only to encourage them to vote;
- advertising by the local jurisdiction in any form; or
- the transmission to the public that is not a local jurisdiction for which the advertising message was intended and in which there is no candidate and no vote on a question or bylaw to which the transmission relates to.

LAEA s.162(1)(e)

When do the rules apply?

The election advertising period commences May 1 in the year of the general election and runs until the end of election day. For the 2021 general election, the advertising period begins on May 1, 2021 and ends on October 18, 2021.

In the case of a by-election, the period commences on the date the by-election is set by resolution and ends on election day. For a vote on a question or bylaw, the period begins on the date the election is set by bylaw or resolution and ends at the end of election day.

Registration of a Third Party

LAEA s.163(1)

An eligible third party must apply for registration in a local jurisdiction when advertising expenses have been incurred (or intend to be incurred) of at least \$1,000, or when the third party has accepted advertising contributions (or intends to accept) of at least \$1,000.

Local jurisdictions must receive applications for registration of third parties in the prescribed form (Form 27 – Registration of a Third Party available at Alberta.ca) which includes:

- the name and contact information of the individual, corporation (and the officer with signing authority), or group (including the principal officers/members);
- the address and telephone number of the place(s) in Alberta where the records of the third party are maintained and the place in Alberta to which communications may be addressed;
- the name and contact information of the chief financial officer responsible for the advertising account of the third party (every third party is required to appoint a chief financial officer under section 178(2));
- the name and address of the financial institution to be used by the third party for its advertising account;
- the names of the signing authorities for the advertising account; and
- any additional information required by the local jurisdiction concerning an advertising account.

If the third party has a governing body, the application must include a copy of the resolution passed by the governing body authorizing the third party to incur election advertising expenses.

As soon as possible after receiving an application from a third party, the local jurisdiction must:

- determine whether the requirements set out in section 163 are met,
- notify the individuals who signed the application whether the applicant is accepted for registration, and
- in the case of a refusal to register, give reasons for the refusal.

LAEA s.162.1

Registration with the Provincial Registrar

A Registrar for third party advertising has been appointed for third party advertising by the Minister of Municipal Affairs.

LAEA s.163(1)

A third party may apply to the Registrar when it is registered with more than 10 local jurisdictions. Any registrations with the local jurisdictions are cancelled once the third party registers with the Provincial Registrar who is then required to maintain the provincial register and meet the legislated requirements under Part 8.

Third parties interested in engaging in election advertising in more than 10 local jurisdictions can be directed to the appointed Provincial Registrar at:

Executive Director
Municipal Capacity and Sustainability Branch
Municipal Affairs
17th Floor, Commerce Place
10155 - 102 Street
Edmonton, AB T5J 4L4

Phone: 780-427-2225 (dial 310-000 first for toll-free)

Email: ma.lgsmail@gov.ab.ca

LAEA s.163(8)

When there is any change in the information required to be provided by a registered third party, they must notify the local jurisdiction (or Provincial Registrar, if applicable) in writing within 30 days and upon receipt of the notice, the local jurisdiction (or Provincial Registrar, if applicable) must update the register accordingly. Providing written notification by fax or email is acceptable.

LAEA s.163(6)

Who cannot be a Third Party Advertiser?

In addition to a candidate running for office, the following are not eligible to be registered as a third party advertiser:

- a corporation that does not carry on business in Alberta;
- an individual who is not ordinarily resident in Alberta;
- a trade union or employee organization that is not an Alberta trade union or Alberta employee organization;
- a group where any member of the group is ineligible per the clauses above;
- a registered charity; and
- a prohibited corporation (as defined in the *Election Finances and Contributions Disclosure Act*).

LAEA s.163(5) and (5.1)

If a third party wishes to register under a name that nearly resembles the name or abbreviation of the name or a nickname of a candidate that is active anywhere in that local jurisdiction (or Provincial Registrar, if applicable), so that confusion is likely in

the opinion of the local jurisdiction (or Provincial Registrar, if applicable), the application can be denied.

In addition, a local jurisdiction (or Provincial Registrar, if applicable) shall not register a third party if the proposed name was the name of a registered third party whose registration was cancelled or whose name was changed since the last election.

LAEA s.164

Cancellation of Registration

A registration may be cancelled upon a third party's written application to the local jurisdiction (or Provincial Registrar, if applicable), or if a chief financial officer of a third party fails to file an election advertising return under section 182 or to report about advertising contributions received during the election advertising period according to section 180.

If the registration of a third party is cancelled, and advertising contributions had been received and election advertising costs incurred, the required disclosures must still be filed. All the funds in the election advertising account must be dealt with according to section 183 (see Disposition of Advertising Account Funds section below).

Third Party Election Advertising Expenses

A third party election advertising expense is defined as an expense incurred in relation to the production of an election advertising message in the format in which the message is to be transmitted and the acquisition of the means of transmission to the public of an election advertising message. For example, a flyer promoting a candidate may have costs associated with its graphic design and printing, as well as costs associated with its mailing.

LAEA s.178

Every third party must appoint a chief financial officer who must then authorize every election advertising expense paid from the third party's advertising account. All election advertising expenses paid for by a third party from its advertising account must be recorded in its advertising report as part of its election advertising return.

LAEA s.165

Limits on Election Advertising Expenses

The LAEA allows for the establishment of a regulation that sets out the amount of money that may be spent by registered third party advertisers on election advertising during the election advertising period. There is no regulation in place for the purpose

of the 2021 municipal election; therefore, spending on election advertising is not restricted.

LAEA s.167(4)

If a third party is not eligible to be registered under section 163, they must not incur election advertising expenses in a total amount of \$1,000 or more.

Third Party Election Advertising Contributions

LAEA s.162(1)(b)

In Part 8, advertising contributions include money provided to or for the benefit of a third party, or real property, goods or services, or the use of real property, goods or services provided to or for the benefit of a third party without compensation from that third party, for the purpose of election advertising.

Some common examples of real property, goods or services, or the use of real property, goods or services, are a computer or furniture, signage or pamphlets, the use of a venue to hold a meeting or to use as an office, and telephone canvassing.

LAEA s.162(2)

For the purposes of this definition, services include those provided by an individual who is self-employed if the services are normally charged for by that individual, but do not include:

- volunteer labour provided by an individual, so long as that individual does not receive from that individual's employer or any person, compensation or paid time off to volunteer;
- professional services provided free of charge for work relating to compliance with this Act;
- services provided free of charge by an individual acting as the chief financial officer of the recipient of the services for work relating to compliance with this Act; or
- services a third party provides in support of its own campaign.

LAEA s.167

Any individual, corporation, trade union, or employee organization cannot make an advertising contribution to a third party unless the third party is registered (unless the third party is not required to be registered).

The following cannot make an election advertising contribution:

- an individual ordinarily resident outside of Alberta;

- a prohibited corporation (as defined in the *Election Finances and Contributions Disclosure Act*);
- a trade union or employee organization that is not an Alberta-based trade union or employee organization;
- a registered charity; or
- a group of which any member of the group is ordinarily outside of Alberta, a prohibited corporation, a trade union or employee organization (unless an Alberta based union or organization).

If a third party knows or ought to know that an election advertising contribution is going to be made by an entity listed above, they shall not accept it, directly or indirectly.

LAEA s.173

Advertising Contributions less than \$50

When money is given at a meeting held for a third party advertiser, in response to a general collection of money solicited from the persons in attendance at the meeting, individual amounts given of \$50 or less are not considered a contribution, but the aggregate gross amount collected shall be recorded.

LAEA s. 175

Anonymous and Unauthorized Contributions

An anonymous contribution in excess of \$50 shall not be used or expended by the registered third party and must be returned to the contributor. If the identity of the contributor cannot be established, the amount must be paid to the general revenue of the local jurisdiction (or Provincial Registrar, if applicable).

If a chief financial officer of a third party unknowingly accepts election advertising contributions from a non-eligible donor, they must notify the local jurisdiction (or Provincial Registrar, if applicable) in writing and return the contribution within 30 days after learning of the contravention. If the contributor's identity cannot be established, an amount equivalent to the advertising contribution must be paid to the general revenue of the local jurisdiction in which the third party is registered. Any amounts received by the Registrar must be paid into the General Revenue Fund.

LAEA s.176

Contributions Not Belonging to the Contributor

No contributor shall contribute to any third party that is registered, or is required to be registered, if the funds being contributed do not belong to the contributor, or were given or furnished to the contributor by a person, group, corporation, trade union, or employee organization for the purpose of making an election advertising contribution.

The chief financial officer is required to advise the local jurisdiction (or Provincial Registrar, if applicable) in writing of the fact and circumstances if they become aware of the acceptance of a contribution not belonging to an individual, corporation, trade union or employee organization, or if funds have been furnished. The chief financial officer must return the contribution according to the directions of the local jurisdiction (or Provincial Registrar, if applicable).

LAEA s.174

Loans

A third party advertiser may borrow money only from a financial institution. The details of the loan must be recorded by the chief financial officer and shall be reported accordingly to the local jurisdiction.

Loan payments made by others on behalf of third parties are considered contributions. All contribution restrictions apply. A contribution receipt must be issued unless the third party repays the full amount of the loan payments made on its behalf prior to the filing of the applicable advertising report or return next required to be filed pursuant to section 182.

LAEA s.177

Receipts

A third party is required to issue receipts for every advertising contribution accepted by the third party in the form and manner approved by the local jurisdiction in which it is registered (or Provincial Registrar, if applicable). At a minimum, receipts should include the date of the contribution, name and address of the contributor, and the amount contributed.

LAEA s.171

Valuing Contributions Other Than Money

Third party advertising contributions other than money must be valued at the market value of the contribution at the time they are made. If any real property, goods or

services or the use of same are provided to a third party for a price that is less than the market value at the time, the amount by which the value exceeds the price is considered an advertising contribution.

LAEA s.172

Fund-raising Functions

The provisions for fund-raising functions held by or on behalf of a registered third party are much the same as for the provisions in Part 5.1 – Election Finances and Contributions Disclosure. The chief financial officer of the third party that held the function or on whose behalf the function was held must record the gross income from any fund-raising function.

Refer to the section in Module 3 for a description of how the amount of the advertising contribution is determined if a fund-raising function is held by the sale of tickets by or on behalf of a third party.

LAEA s.169

Deposits

All money contributions accepted by or on behalf of a registered third party, and any contribution other than money that is converted into money, must be paid into the election advertising account on record with the local jurisdiction. The advertising account must be used for all payments of election advertising expenses and all transfers to other third parties.

LAEA s.167(2.1)

Limit on Third Party Advertising Contributions

No individual, corporation, trade union or employee organization shall make advertising contributions to any third party during an election advertising period that exceed, in the aggregate, \$30,000. In other words, a given donor will be able to provide no more than \$30,000 in total per election advertising period.

Any money paid by a third party from its own funds for election advertising is considered an advertising contribution of the third party.

LAEA s.166

Collusion

Collusion between third parties and candidates to circumvent or attempt to circumvent expense and contribution limits set out in Part 5.1 (Election Finances and Contributions Disclosure) or Part 8 (Third Party Advertising) is prohibited.

Identification of Third Parties

A third party, or a person acting on their behalf, must ensure that election advertising that is sponsored by a third party complies with the following:

- the advertising must include the name and contact information of the third party, and the authorization of the third party;
- if the advertising is broadcast through electronic media, the name and contact information must be stated at the beginning of the advertisement;
- in the case of a telephone advertisement (whether live or automated):
 - the telephone number of the third party must be capable of being displayed;
 - the name of the third party must be stated at the beginning of the advertisement;
 - it must be stated whether the advertisement has been authorized by the third party; and
 - the telephone number where the third party may be contacted must be included at the end of the advertisement.

The Minister is required to establish guidelines respecting identification of third parties. Returning officers are encouraged to review these guidelines and make them available to third parties. Third party guidelines are available on Alberta.ca.

Disclosures of Third Party Advertisers

Disclosures of Contributions for Election Advertising

Every third party who engages in election advertising is required to file a report regarding advertising contributions received during the election advertising period in the prescribed form (Form 28 – Third Party Advertising Contribution Statement – available on Alberta.ca). This report must be filed with the local jurisdiction or Provincial Registrar by March 1 following a general election or, in the case of a by-election or a vote on a question or bylaw, within 120 days. It must set out:

- the total amount of all advertising contributions received that did not exceed \$250 in total from any single donor; and
- for each contributor who made advertising contributions during the election advertising period totaling more than \$250, the total amount contributed along with the name and address of the contributor, and the amount and date of each contribution.

LAEA s.182

Third Party Election Advertising Return

By March 1 following a general election or, in the case of a by-election or a vote on a question or bylaw, within 120 days, registered third parties must also file an election advertising return, which includes:

- a financial statement;
- a list of all advertising contributions received during the election advertising period;
 - (this list must set out, for each contributor who made election advertising contributions totaling more than \$250, the contributor's name and address and the amount and date of each advertising contribution)
- an election advertising spending limit report referred to in section 165(4);
- the time and place of broadcast or publication of the advertisements to which the election advertising expenses relate; and
- any supporting information and documents relating to the election advertising return.

Even if a registered third party has not incurred election advertising expenses, the return still must be completed to that effect. A local jurisdiction (or Provincial Registrar, if applicable) may request a chief financial officer to provide the original of any bill, voucher or receipt for an election advertising expense of more than \$50.

Since the LAEA is silent on the public disclosure of the advertising report and return, local jurisdictions may wish to consider developing a policy to address the means by which the required documents are made public.

LAEA s.183

Disposition of Advertising Account Funds

Any surplus funds held by a registered third party in its election advertising account at the end of an election advertising period must be held in the advertising account to be expended for election advertising during a subsequent election advertising period.

If a registered third party decides not to expend the funds for election advertising during the next election advertising period, or does not engage in election advertising during the next election advertising period, the third party must deal with the surplus within six months in one or more of the following ways:

- transfer the surplus to the election advertising accounts of other third parties in accordance with section 178,
- donate the funds to a registered charity,
- return the surplus to the third party's contributors if they can be identified, or
- if any portion of it cannot be dealt with in any of the ways listed above, pay that portion to the party with whom they have registered.

A registered third must advise the local jurisdiction (or Provincial Registrar, if applicable) of its decision(s) regarding the funds and apply to the local jurisdiction to cancel its registration under section 164. The chief financial officer must file an Election Advertising Report on or before March 31 of each year until all funds have been disposed of completely.

LAEA s.184

Late Filing

Failure to file a report and return with the local jurisdiction (or Provincial Registrar, if applicable) by the filing deadline will result in an automatic \$500 late filing fee. If the fee is not paid within 30 days, the local jurisdiction (or Provincial Registrar, if applicable) must send a notice to the third party indicating the amount of the late filing fee to be paid.

If a third party who is sent a notice fails to pay the late filing fee, the local jurisdiction (or Provincial Registrar, if applicable) may file a notice with the Court of Queen's Bench.

If a third party fails to file a report and return, the local jurisdiction (or Provincial Registrar, if applicable) may cancel the third party registration. The local jurisdiction (or Provincial Registrar, if applicable) cannot cancel the registration if a third party files a report and return no later than 30 days after the filing deadline.