



LE DIRECTEUR GÉNÉRAL  
DES ÉLECTIONS DU QUÉBEC

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## **INFORMATION FOR THE MEDIA**

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**Financing of candidates and control of election expenses**

**Chapter XI of the Act respecting school elections (RLRQ, C.E-2.3)**

**- May 2014 -**



This document is aimed at briefly presenting the role of the media with respect to the application of chapter XI of the Act respecting school elections (RLRQ, C. E-2.3) (AES). This chapter deals with the financing candidates as well as the control of election expenses.

The media concerned are radio, television and cable broadcasters, newspapers, periodicals or other printed material and web media.

## **ROLE**

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The media must take all appropriate measures to ensure that, within the limits of their jurisdiction, the provisions of the AES regarding political financing and control of election expenses are respected.

## **A FEW DEFINITIONS**

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### ***Election Expense (s. 206.34)***

An election expense is the cost of any good or service used during the election period to:

1. to directly or indirectly promote or oppose the election of a candidate;
2. to propagate or oppose the program or policies of a candidate;
3. to approve or disapprove of courses of action advocated or opposed by a candidate; or
4. to approve or disapprove any act done or proposed by a candidate.

### ***Exceptions (s. 206.36(1) and (2))***

The following are not election expenses:

- The cost of publishing articles, editorials, news, reports or letters to the editor in a newspaper, periodical or other publication, provided that they are published in the same manner and under the same rules as outside the election period, without payment, reward or promise of payment or reward, that the newspaper, periodical or other publication is not established for the purposes or in view of the election and that the circulation and frequency of publication are as what obtains outside the election period.
- The cost of broadcasting by a radio or television station of a public affairs, news or public opinion program, provided that the program is broadcast in the same manner and under the same rules as outside the election period, without payment, reward or promise of payment or reward;

Section 206.36 of the AES contains other exceptions.

### ***Order from an authorized candidate (s. 206.42)***

A media may not accept or execute an order for election expenses that is not incurred or authorized by the official agent.

It is thus up to the media to ensure, before executing an order, that the person who authorizes this expense is really the authorized candidate.

### ***Cost (s. 206.43)***

For a good or service, part or all of the price of which is an election expense, a media may not claim or accept a price that is different from the normal price for such a good or service outside the election period.

### ***Election period (s. 206.1)***

This is the period beginning 44 days before polling day, and ending on polling day at the time of closing of polling stations.

### ***Free air time and space during an election period (s. 206.46)***

During an election period, a media may, without its constituting an election expense, make air time on the radio or television or space in the newspaper, periodical or other publication available free of charge to candidates, provided he offers such service equitably as to quality and quantity to all the candidates for the same office.

It should be noted that a media may offer free of charge, outside an election period, space or air time to a member of the council of commissioners without being required to do same at the candidate of school board. This offer does not have to be made to a specific candidate but rather to an elected member of the council of commissioners to enable him communicate to the population information related to the activities related to his elected office.

**However, as soon as an election period begins, any such free publication or communication has to stop since this free space or air time risks being used to directly or indirectly promote the election of a candidate, which could have the effect of placing the media in violation of the Act.**

### ***Procedure recommended by the Chief Electoral Officer***

1. The media communicates its offer in writing to all candidates; this media is free to then specify the conditions of its offer.

2. A certified copy of this notice of intention is also sent to the Department of Legal Affairs of the Chief Electoral Officer.
3. The media invites those interested to discuss how its offer will be applied in order to reach a consensus; should there be a failure to reach a consensus, it is up to the media to establish a fair procedure within the meaning of the Act.
4. The media transmits to the Department of Legal Affairs of the Chief Electoral Officer details of the consensus arrived at or, if need be, the fair procedure within the meaning of the Act.
5. Whenever one of the parties to this agreement takes up the offer of a media, that party has to state at the start or at the end of the message that it is done in accordance with the Act respecting school elections (RLRQ, C.E-3.3)

### **Identification of advertising material (s. 206.44)**

Any advertising copy, object or material relating to an election must bear the name of the printer or manufacturer as well as the name of authorized candidate who caused it to be printed or manufactured.

Any advertisement related to an election and published in a newspaper or other publication must bear the name of the authorized candidate who caused it to be published.

In case of an advertisement relating to an election broadcast on radio or television or circulated by means of any other information medium or technology, the name of the authorized candidate, must be mentioned at the beginning or at the end of the advertisement.

Any goods or services all or part of the cost of which constitutes an election expense must be considered to relate to an election.

Failure to identify or an error in identifying advertising material will result in depriving a candidate of the reimbursement of election expenses to which he is entitled.

When the distribution of an advertisement or an advertising message contains an error in identification, the media concerned may not re-broadcast the message or advertisement under the caption "erratum." Any new running of the advertisement or message will be considered as an election expense.

### **Invoicing (s. 206.49)**

Any media to which an amount is owed for election expenses shall present its claim to the authorized candidate within 60 days after polling day.

No claim presented after the expiration of the prescribed time may be paid by the authorized candidate. It shall be presented to the treasurer of the municipality within 120 days after the expiration of the prescribed time, failing which the claim is prescribed.

### ***Private intervenor (s. 206.36(8), 206.45 and 209.9 to 209.26)***

Provisions of the Act respecting school elections allow a private intervenor to make or incur advertising expenses during an election period to publicize his opinion on a topic of public interest or to solicit support for such an opinion or to advocate abstention or the spoiling of ballots.

The private intervenor is an elector or a group composed with a majority of whom are qualified electors that is not endowed with a legal personality.

### ***Authorization required***

First, the private intervenor must obtain an authorization from the returning officer of the school board, between the 44th and 20th day before polling day.

When he is authorized, the returning officer of the school board assigns an authorization number to the private intervenor. This authorization number must appear in any advertising produced by the private intervenor and must indicate the name and title of the private intervenor or his representative.

### ***Advertising expenses not exceeding \$300***

Only advertising expenses may be incurred by a private intervenor. These advertising expenses may not directly or indirectly promote or oppose a candidate and may not exceed \$300. The private intervenor must pay the cost of these expenses from his own property or those of the members of his group who are qualified electors.

### ***Main offences and penalties***

The following persons are guilty of an offence:

- S. 219.10

Any media that makes air time available free of charge to an authorized candidate outside an election period without offering same equitably as to quality and quantity to the other candidates for the same office, as the case may be.

- S. 219.14

- Anyone who accepts or executes an order for election expenses with the knowledge that it is not made or authorized by the authorized candidate
- Anyone who claims or accepts, for goods or services all or part of the cost of which constitutes an election expense, a price he knows to be different from the regular price for similar goods or services outside the election period.
- Anyone who refuses to be paid for goods or services all or part of the cost of which constitutes an election expense.

For the purpose of applying section 219.14, the expression "election expenses" also include advertising expenses incurred by a private intervenor.

- S. 219.15
  - Every owner of a newspaper or other publication who allows the publication of an advertisement he knows to be related to an election without the name of the authorized candidate who caused it to be printed or manufactured.
  - A radio or television broadcaster who allows the broadcasting of an advertisement that the broadcaster knows to be related to an election without the name of the authorized candidate who caused it to be broadcast.
  - Anyone who circulates or allows the circulation of an advertisement that the person knows to be related to an election by means of any information medium or technology other than those referred to in the subparagraphs above without the name of the authorized candidate who caused it to be circulated at the beginning or at the end of the advertisement.

For the purposes of applying section 219.15, the expression "candidate" also includes the private intervenor.

### ***Complicity (S.222 and 223)***

Every person who, by his act or omission, by encouragement, advice or orders, leads another person to commit an offence is guilty of the offence as if he had committed it himself if he knew or should have known that his act or omission would probably result in aiding to commit the offence.

### ***Penalties (S.221.1)***

Anyone who is guilty of an offence under sections 219.1 to 219.18 could be liable to a fine of \$1,000 to \$200,000.