May 10, 2005

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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

2005 MAY 16 A 10:40

Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, D.C. 20463

AOR 2005-07

Dear Commissioners:

I am a candidate for the Arkansas District 2 seat in the U.S. House of Representatives in the upcoming November 2006 election cycle. I am also a co-owner (along with my wife) of Spirit Publications, Inc., a small publishing company near Little Rock, Arkansas.

I am writing to seek an Advisory Opinion regarding two publications produced by Spirit Publications, in order to clarify activities of these publications as they may pertain to potential "expenditures" for the Andy Mayberry for Congress campaign. This inquiry is prompted by a page 3 article in the May 2005 Federal Election Commission *RECORD* newsletter regarding media exemption "unless the facilities are owned or controlled by a political party, political committee or candidate." I have enclosed a history and summary of both publications produced by Spirit Publications, along with samples of each, to provide you with additional information you may find useful in reaching your decision.

After you have had a chance to review the enclosed background information and samples, please address the following questions:

1. *The Spirit Magazine* and *The East Ender* newspaper are the principle sources of income for Spirit Publications, Inc., as well as being previously established, credible and expected forms of communication among their respective audiences. Is it permissible for Spirit Publications to continue producing and distributing both *The Spirit Magazine* and *The East Ender* newspaper in their current or similar forms with current or similar content and distribute to their current or similar audiences without these activities being considered as campaign expenditures for the Andy Mayberry for Congress campaign? (See enclosures for publication details.)
2. As publisher, I have been a regular opinion columnist for each of these publications since their inception. (*The East Ender* began in 2000, and *The Spirit Magazine* began in 2003.) **Can this long-standing -- and again, "expected" -- practice of these publications continue as long as the columns are not "for the purpose of influencing a Federal election"?**
3. Due to its role as a community newspaper -- the only newspaper for this community of more than 5,600 -- a primary responsibility of *The East Ender* has been to provide bona fide, unbiased news coverage of local elections and local candidates. Equal opportunity coverage has always been and will continue to be provided to local candidates' campaigns, regardless of party or political affiliation. Please note the included examples of past issues, where similar article length and placement were given to candidates from opposing parties as they provided information about their respective candidacies. In fact, you will note I have included a cover page from a

previous issue that prominently featured Rep. Vic Snyder, whose office I seek in the upcoming election and who will be my likely opponent in the general election. In this particular issue, Rep. Snyder and his opponent were each provided an identical questionnaire and their responses were run verbatim along with a photograph provided by each candidate's campaign office. To ignore the campaign of any local resident would violate the policy and tradition of *The East Ender* newspaper and its responsibility to keep the public informed of local news. **Based on this issue of fairness and First Amendment rights, can *The East Ender* provide bona fide news coverage substantively equal in nature to the Andy Mayberry campaign for Congress that it would and does provide free to other candidates without this being considered as an expenditure for the Andy Mayberry for Congress campaign?**

4. Can the Andy Mayberry for Congress campaign purchase advertising space in *The East Ender* newspaper at the same rate that such space is sold to other advertising entities, including other candidates for offices, which could potentially include my opponent?
5. Assuming it is allowable for the Andy Mayberry for Congress campaign to purchase ad space, would the newspaper's standard-rate advertising cost for that space be considered as the amount of the "expenditure"?

Due to the time-sensitive nature of these publications and the issues involved, I respectfully ask for an expeditious review of this Advisory Opinion request.

If you need additional information, please do not hesitate to call me at 501-888-8222 or e-mail me at mayberry@alltel.net.

Thank you,

Andy Mayberry

enclosures

The East Ender Newspaper

East End is a steadily growing, unincorporated community in Arkansas with a population of 5,623 at the 2000 census and still expanding fast through the first half of this decade. It is the third-largest unincorporated area in the state.

East End is home to a public elementary and intermediate school, a growing business district, a community association and ballpark, and several local churches and other organizations. **However, until five years ago, the residents of the area lacked any sort of local media or organized method to communicate within the community.**

My wife and I realized East End had an increasing need for a local newspaper. That's why we started *The East Ender* publication in March of 2000. Over the past five years, we've had the wonderful opportunity to report about so many of the community's finest people, places and events. *The East Ender* provides unbiased news coverage of everything from crime and taxes to school and church activities, from weddings and engagements to births and obituaries. In addition to unbiased news coverage, *The East Ender* also has traditionally provided a forum for people of differing viewpoints to express opinions on a variety of topics of local interest.

It is a tabloid-sized newspaper, typically about 20 pages in length. It has a print run of 1,500 and is distributed the first Thursday of each month. It has a paid subscriber list that ranges between about 250 to 300 homes that receive it via mail delivery. A one-year subscription is $10 for 12 issues. Copies are also available for sale at a cost of 50 cents at approximately 25 to 30 locations in and near the community, including news racks and inside store sales. As with most newspapers, its chief source of revenue is through the sale of advertising space to businesses.

The Spirit Magazine

The Spirit Magazine is a monthly, general-interest, Christian-based publication with a circulation of more than 10,000, primarily in Central Arkansas. It is positive, family friendly and spiritually uplifting. It is a glossy, color publication that offers something for everyone ... from motivational and general interest features to outdoors, investment, legal, cooking and parenting advice columns. *The Spirit Magazine* often features the Christian testimony of a prominent Arkansan. It also often includes periodic quizzes, movie reviews, poems, and unsolicited submissions from readers. The stated mission of *The Spirit Magazine* is to spread "the good news of Jesus Christ as Son of God and Savior to all who accept his gift."

The Spirit Magazine is distributed free at more than 140 locations in Pulaski, Saline, Grant and Jefferson counties in Arkansas, with additional locations in Central Arkansas added each month. These locations include public libraries, hospitals, clinics, churches, restaurants, book stores, a variety of retail businesses, and other high-traffic areas. Additionally, there is a growing list of about 600 paid subscribers to *The Spirit Magazine*. These subscribers are from various communities throughout Arkansas and in 15 to 20 other states. Subscriptions for home mail delivery are available at the rate of $15 annually for 12 issues.

The Spirit Magazine was established in its current magazine format in December 2003 as a spin-off publication of the now-defunct "good news" newspaper, *The Spirit of Saline County*, which was established in early 2003. Because it is primarily distributed as a free publication, the principle source of revenue for *The Spirit Magazine* is through advertising space sold to various businesses, churches and other organizations.

Spirit Publications, Inc., which publishes both The East Ender newspaper (previously a sole proprietorship) and The Spirit Magazine, was incorporated in January 2003.

Mai Dinh/FEC/US
05/26/2005 07:41 PM

To mayberry@alltel.net
cc Merita Johnson/FEC/US@FEC, Rosie Smith/FEC/US@FEC, Albert Kiss/FEC/US@FEC
bcc
Subject Advisory Opinion Request

Dear Mr. Mayberry:

Thank you for speaking with Al Kiss and me today regarding your request for an advisory opinion. During our conversation, you confirmed that news stories referring to you or other candidates for Federal office in the East Ender or the Spirit Magazine will be bona fide news accounts communicated in a publication of general circulation that are part of a general pattern of campaign-related news coverage that give reasonably equal coverage to all opposing candidates in the circulation area of these publications. In addition, you stated that you do not expect that the distribution or circulation of any edition of the East Ender or Spirit Magazine to increase for any reason other than through ordinary growth of each publication. Finally you confirmed that the East Ender has one standard rate that it charges to all advertisers. The standard rate includes a premium for color advertisements, a discount for advertising in every issue and a premium charged to all advertisers who place an advertisement in a special magazine-type edition of the East Ender.

As we mentioned, the Office of General Counsel will treat your letter dated May 10th and your responses today as a complete advisory opinion request as of today. If you have any questions, please contact us. Thank you.

Sincerely,

Mai Dinh
Assistant General Counsel
Policy Division

"Andy & Julie Mayberry "
<mayberry@alltel .net>
05/27/2005 10:18 AM

To <mdinh@fec.gov>
cc <mjohnson@fec.gov>, <rsmith@fec.gov>, <AKiss@fec.gov>
bcc
Subject Re: Advisory Opinion Request

Dear Mai,

Thank you for your efforts in regard to the advisory opinion I seek. Yes, generally speaking, your e-mail message below reflects the content of our phone conversation. For the sake of clarification, let me provide more detail about a couple of the points you mentioned:

1) There is only one advertiser in The East Ender who receives a 15 percent discount for advertising in every issue. This agreement was made several years ago when this advertiser approached us with the offer. Soon afterward, however, a business decision was made to not promote or provide "frequency" discounts for advertisers in The East Ender publication. However, we continued to honor (and still do) the agreement already reached with this particular local business. All other advertisers -- including any new advertisers that would potentially include the Andy Mayberry for Congress Campaign or any other political campaigns -- would be subject to the standard rates without benefit of "frequency" discounts.

2) The special magazine-type edition of The East Ender was a commemorative issue celebrating the publication's fifth anniversary. That is the only special issue we have printed of that publication. It contained only feature stories and photos of local people, places and things, and none of the content was political in nature in any regard. At this time, there are no additional special issues planned for the future.

Thank you for allowing me the opportunity to provide more detail regarding this matter. Again, I appreciate your efforts. Please let me know if you need any additional information.

Sincerely,
Andy Mayberry

----- Original Message -----
From: mdinh@fec.gov
To: mayberry@alltel.net
Cc: mjohnson@fec.gov ; rsmith@fec.gov ; AKiss@fec.gov
Sent: Thursday, May 26, 2005 6:41 PM
Subject: Advisory Opinion Request

Dear Mr. Mayberry:

Thank you for speaking with Al Kiss and me today regarding your request for an advisory opinion. During our conversation, you confirmed that news stories referring to you or other candidates for Federal office in the East Ender or the Spirit Magazine will be bona fide news accounts communicated in a publication of general circulation that are part of a general pattern of campaign-related news coverage that give reasonably equal coverage to all opposing candidates in the circulation area of these publications. In addition, you stated that you do not expect that the distribution or circulation of any edition of the East Ender or Spirit Magazine to increase for any reason other than through ordinary growth of each publication. Finally you confirmed that the East Ender has one standard rate that it charges to all advertisers. The standard rate includes a premium for color advertisements, a discount for advertising in every issue and a premium charged to all advertisers who place an advertisement in a special magazine-type edition of the East Ender.

As we mentioned, the Office of General Counsel will treat your letter dated May 10th and your responses today as a complete advisory opinion request as of today. If you have any questions, please contact us. Thank you.

Sincerely,

Mai Dinh
Assistant General Counsel
Policy Division