FEDERAL ELECTION COMMISSION
Washington, DC 20463

5 AUG 1976

RE: AOR 1976-29

Honorable William L. Armstrong
House of Representatives
Washington, D.C. 20515

Dear Mr. Armstrong:

This letter responds to yours of February 26, 1976, requesting an advisory opinion as to the applicability of certain provisions of the Federal Election Campaign Act of 1971, as amended (the "Act"), to the circumstances described in your letter. You advised that you are a stockholder, a director, and an officer of a newspaper and of a broadcasting corporation which owns a radio station. You requested advisory opinion as to whether you would be required report the publication and broadcast of news accounts, by the newspaper or radio station which you own and control, concerning your activities and statements as a candidate for election to Federal office.

We regret the delay in answering your inquiry, but subsequent to the Supreme Court's decision in Buckley v Valeo, 424 U.S. 1 (1976), the Commission was required suspend the issuance of advisory opinions until after the date of its reconstitution. Moreover, 2 U.S.C. §437f, as amended by the Federal Election Campaign Act Amendments of 1976, now requires the Commission to formulate its rules of general applicability by proposing formal regulations rather than by the advisory opinion process. The Commission has recently given final approval to proposed regulations which have been transmitted to Congress pursuant to 2 U.S.C. §438(c). Pertinent sections of those regulations are enclosed.

Your letter expresses the view that expenses incurred by the radio station or newspaper which you own and would not be expenditures made for the purpose of influencing your nomination or election to Federal office. The Commission has concluded on a number of occasions that an affirmative intent to influence an election is not essential to conclude that a particular payment is “made for the purpose of influencing” and thus an expenditure. Moreover, the language of 2 U.S.C. §431(f)(4)(A) strongly suggests that if a given publication is not within the exemption, then the payment necessary to defray the expense connected with that publication would be an “expenditure” under the Act. The statutory exemption extends to:

> any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate. 2 U.S.C. §431(f)(4)(A). (Emphasis added.)

However, based on the Commission's recent actions with respect to proposed regulations, the publication and broadcast of the news accounts described above would not be subject to the limitations, prohibitions or reporting requirements of the Act so long as the news accounts (1) represent bona fide news accounts communicated in a publication of general circulation, or on a licensed broadcasting facility and (2) are part of a general pattern of campaign related news accounts which give reasonably equal coverage to all opposing candidates in the circulation or listening area. See FEC Proposed Regulations, §§100.4(b)(8) and 100.7(b)(3) (copy enclosed).

Whether or not any particular news account would be treated as bona fide news as opposed to political advertising would depend on the facts and circumstances of each case. If, however, the newspaper or radio station presents an account of your campaign activities as a news item, as distinguished from a commentary or editorial, in the same manner and with reasonably equal exposure as their news coverage of any other candidate's political activities, the account would, presumably, be bona fide news.

The foregoing conclusion with respect to news accounts would not, however, be generally applicable to commentaries and editorials. Unlike news, commentaries and editorials are intended to reflect the subjective views of the publisher or broadcaster. In the context of a political campaign, commentaries and editorials tend to be partisan in nature and to be disseminated for the purpose of influencing the outcome of an election. Thus, since you own and control the newspaper and radio station, you or your campaign committee will, absent strong evidence to the contrary, be presumed to have received a contribution in-kind to influence your election when your newspaper or radio station disseminates commentaries or editorials favorable to your candidacy or unfavorable to your opponents.

In those circumstances, and since both the newspaper and radio station are held and function as corporations, the expenditures incident to producing communications in the nature of “commentaries and editorials” would be prohibited under 2 U.S.C. §441b.

The views and conclusions stated in this letter should not be regarded as superseding or affecting the application of any statutes, rules, or regulations within the purview of the Federal Communications Commission.

This response relates to your opinion request but may be regarded as informational only and not as an advisory opinion since it is based in part on proposed regulations of the Commission which must be submitted to Congress. The proposed

regulations may be prescribed in final form by the Commission only if not disapproved by the House or the Senate within thirty legislative days from the date received by them. 2 U.S.C. §438(c). The proposed regulations were submitted to Congress on August 3, 1976. It is the Commission's view that no enforcement or compliance action should be initiated in this matter if your actions conform to the conclusions and views stated in this letter.

Sincerely yours,

(signed)

Vernon W. Thomson
Chairman for the
Federal Election Commission

Enclosure [§§100.4 & 100.7 of proposed regs]