



FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 3, 1978

AO 1978-76

Carole Shotwell
Legal Counsel
Honorable Robert B. Duncan
U.S. House of Representatives
Washington, D.C. 20515

Dear Ms. Shotwell:

This is in response to your letters of September 21 and October 27, 1978, requesting an advisory opinion on behalf of Representative Robert Duncan concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the use of a film.

Your letter of September 21, states that Mr. Duncan used campaign funds to produce a film which "depicts facilities available to the constituents and the services provided by our office." You add that air time was purchased from three television stations to run the film after the November, 1978 elections. A fourth station refused to sell time for the film, but offered instead to run the spots as public service announcements, free of charge to Mr. Duncan. Your letter of October 27, modifies your September 21 letter so that the Commission is asked to consider only whether the station's offer to run the spots as public service announcements would constitute a "contribution" to Mr. Duncan if they are run after the November, 1978 election.

The Commission concludes that the station's offer to run the film as a public service announcement would not constitute an "in-kind" contribution from the station to Mr. Duncan. A news story, commentary, or editorial distributed through the facilities of any broadcasting station is excepted from the definition of "expenditure" under the Act and is not treated as an in-kind contribution unless such broadcast facilities are owned or controlled by any political party, political committee, or candidate. 2 U.S.C. 431(f)(4)(A). This exception is available where in the exercise of its responsibility to serve the public interest, convenience and necessity, the station carries a film produced by Mr. Duncan as a public service announcement to inform his constituents of facilities and services provided through his office.

The Commission expresses no opinion as to possible application of the rules of the Federal Communications Commission to the situation you have described. Neither does the

Commission express any opinion as to possible application of House Rules to the described transactions, nor as to any tax ramifications, since those issues are outside its jurisdiction.

This response constitutes an advisory opinion concerning the application of a general rule of law stated in the Act, or prescribed as a Commission regulation, to the specific factual situation set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

Joan D. Aikens

Chairman for the

Federal Election Commission