



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 6, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-109

Steven R. Bailey
Attorney at Law
2408 Van Buren Avenue
Ogden, Utah 84401

Dear Mr. Bailey:

This responds to your letter dated September 19, 1980, requesting an advisory opinion on behalf of James Hansen, a candidate for the U.S. House of Representatives in the 1980 general election concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to certain proposed activity in connection with Mr. Hansen's campaign.

You state that The Ruff Times is a subscription periodical published since 1975 by Target Publishers, Inc., of San Ramon, California; it is not owned or controlled by any candidate, political party or political committee. Further, you state that The Ruff Times is published twice monthly and is mailed to subscribers who pay \$145 annually for the publication. You state further that the content of this publication is "primarily devoted to current political, economic, and social events and how such events affect subscribers' investments and personal finances." Each issue includes a commentary by Mr. Ruff, and you indicate that Mr. Ruff wishes to devote one or more of his commentaries prior to the 1980 general election to "the subject of various races for federal offices, including the campaign for U.S. Representative." Mr. Ruff has indicated, you say, that he may endorse specific candidates in his commentary including Mr. Hansen, and may urge his subscribers to support such candidates with their votes and with contributions to the candidates or to committees that support the candidates.

You ask specifically whether an endorsement of, including a contribution solicitation on behalf of, Mr. Hansen in a commentary written by Mr. Ruff in The Ruff Times would constitute a contribution to Mr. Hansen by Mr. Ruff, The Ruff Times, or by Target Publishers? The Commission concludes that a contribution under the described circumstances would not result.

Under the Act, a "contribution" is defined as "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office...." However, the Commission's regulations have exempted certain activity from the definition of "contribution". 11 CFR 100.7(b)(2) provides that the term "contribution" does not include "any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station, newspaper, magazine, or other periodical publication... unless the facility is owned, or controlled by any political party, political committee, or candidate...." See also 2 U.S.C. 431(9)(B)(i). This exemption from the definition of "contribution" is a limited exemption designed to insure the right of the media to cover and comment on election campaigns. See H.R. Rep. No. 93-1239, 93d Cong., 2d Sess. 4 (1974). The Commission has defined the phrase "periodical publication" to mean "a publication in bound pamphlet form appearing at regular intervals (usually either weekly, bi-weekly, monthly or quarterly) and containing articles of news, information, opinion or entertainment, whether of general or specialized interest which ordinarily derive their revenues from subscriptions and advertising." See, Explanation and Justification of Candidate Debate Regulations, 44 Federal Register 76735 (December 27, 1979).

Accordingly, the proposed activity, that is, Mr. Ruff's endorsement of Mr. Hansen, and solicitation of contributions to his campaign in the commentary which appears as a regular feature in each issue of The Ruff Times would be covered by the news story exemption in 2 U.S.C. 431(9)(B)(i) and would not result in a contribution to Mr. Hansen's campaign from Mr. Ruff, The Ruff Times or from Target Publishers. This conclusion is based on the assumption that the solicitation of contributions will not involve any arrangement whereby either Mr. Ruff, The Ruff Times, or Target Publishers would become a conduit or intermediary for a contribution made by an individual contributor to Mr. Hansen's campaign committee. Compare Advisory Opinion 1980-46, copy enclosed. Thus, any solicitation for contributions on behalf of Mr. Hansen made by Mr. Ruff in his commentaries is within the cited exemption only if individual contributors are merely instructed to forward their contributions directly to Mr. Hansen or his campaign committee. See 11 CFR 110.6.

Your letter also states that in the past, The Ruff Times has permitted non-political advertisers to insert "separate direct response marketing materials" in various issues of the publication, provided that the advertiser pays a fee for this service. All materials constituting such advertisements must be paid for by the advertiser and are not financed by The Ruff Times. You ask specifically whether the enclosure in The Ruff Times of campaign advertising materials prepared and paid for by Mr. Hansen's principal campaign committee for a fee equal to (or in excess of) the fee which non-political advertisers are normally charged by The Ruff Times, would constitute a contribution to Mr. Hansen by Mr. Ruff, The Ruff Times or Target Publishers?

The Commission concludes that no contribution from Mr. Ruff, The Ruff Times or Target Publishers would result under the proposed arrangement as long as the Hansen campaign committee pays all costs in connection with the preparation and printing of the campaign materials to be inserted into copies of The Ruff Times and provided that the Hansen committee pays the normal and usual fee which non-political advertisers would ordinarily be charged for the same service. The Commission's regulations define the phrase "normal and usual charge" for

services, other than those provided by an unpaid volunteer, to mean "the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services are rendered." 11 CFR 100.7(a)(1)(iii)(B).

Thus, if the Hansen campaign committee is charged the normal and usual rate (and pays such amount) for inserting the campaign materials supplied by Mr. Hansen's committee, no contribution to the Hansen committee results from either Mr. Ruff, The Ruff Times or Target Publishers. See Advisory Opinions 1978-34, 1978-45, copies enclosed.

This response constitutes an advisory opinion concerning application of the Act, or regulation prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

Max L. Friedersdorf
Chairman for the
Federal Election Commission

Enclosures (AO 1980-46, 1978-34, 1978-45)