



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

September 9, 1980

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-90

Mr. Samuel A. Peters  
Senior Counsel-Public Affairs  
Atlantic Richfield Company  
515 South Flower Street  
Box 2579-T.A.  
Los Angeles, California 90051

Dear Mr. Peters:

This responds to your letter of July 25, 1980 requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations to the production and distribution by "Energy Update," a project of the Public Affairs Division of the Atlantic Richfield Company ("the Company"), of videotaped interviews with presidential candidates.

According to your request, the Public Affairs Division of Atlantic Richfield, a corporation, under the direction of Mr. Anthony Hatch, a corporate executive, produces a news service known as "Energy Update." This consists of the monthly production of a one-half hour videotape program including both features and interviews of a number of personnel in and outside of the Company on energy related matters. Cassettes of the program are distributed free to 145 commercial and cable television stations to be used in any manner the station deems appropriate, i.e., the entire program, a portion of the videotape, or none of the tape. As one of its monthly productions "Energy Update" plans to compile interviews conducted by Mr. Hatch with the major presidential candidates on a list of energy related subjects. This videotape compilation would be distributed in the same fashion as all "Energy Update" videotape programs. You specifically ask whether 2 U.S.C. 441b would be violated if the Company were to produce and distribute this program of interviews with presidential candidates.

The Commission is of the opinion that by producing and distributing such videotape, Atlantic Richfield would violate the Act. 2 U.S.C. 441b provides, in part, that it is unlawful for

any corporation to make a contribution or expenditure in connection with any Federal election. For purposes of 441b the terms "contribution or expenditure" are defined to include, any "direct or indirect payment... or anything of value" to any candidate in connection with a Federal election. 2 U.S.C. 441b(b)(2). Since the taping and publication of the candidate views on energy issues is certainly something of value to the candidates provided by the Company, a contribution by the Company to each candidate would result.

Both the statute and Commission regulations contain specific exemptions from the definition of contribution and expenditure. The statute exempts communications by a corporation to its stockholders, executive or administrative personnel and their families on any subject, as well as nonpartisan registration and get-out-me-vote campaigns aimed at those same persons. See 2 U.S.C. 441b(b)(2)(A), (B) and 11 CFR 114.3. Section 114.4 of the Commission's regulations which addresses nonpartisan communication by a corporation and labor organization places those entities under special constraints when engaging in nonpartisan activities related to Federal elections which are not restricted to the entities' stockholders, administrative or executive personnel, or members and their families.

Commission regulation 114.4(c) specifically addresses nonpartisan voting information. Of particular relevance is 114.4(c)(3) which permits a corporation to distribute voter guides or other types of brochures describing the candidates and their positions if (i) the materials do not favor one candidate or political party over another; and (ii) the materials are obtained from a civic or other nonprofit organization which does not endorse or support or is not affiliated with any candidate or political party.

The Commission has previously considered the publication, in a newspaper of general circulation, of written questions sent by letter to presidential candidates along with their written responses to those questions. See Advisory Opinion 1979-70, copy enclosed. There the Commission concluded that since the materials which constituted the communication, that is the original letter to the candidates and their responses, were not obtained from a civic or other nonprofit organization as required by 114.4(c)(3), a corporation could not pay any of the costs involved in publishing the communication.

The situation here is similar and the result is the same. The proposed communication would relate candidates' views and be distributed to those outside of the limited class to whom the corporation may communicate in connection with a Federal election. Since the material which Atlantic Richfield proposes to distribute is prepared by the corporation itself and not obtained from a civic or other nonprofit organization, the communication does not meet the requirements of 114.4(c)(3). Any costs incurred by Atlantic Richfield for the described videotape interviews would constitute prohibited payments under the Act.

It should be noted that the request suggests that this activity is part of a "news service" which in turn would come within the news story exemption found in 2 U.S.C. 431(9)(B)(i) since the broadcast stations are to make the judgment as to use of the videotape. This is an inaccurate interpretation of the news story exemption. The exemption was intended to apply to election related communications by a broadcaster, newspaper or other form of recognized public media.

It is not meant to include a communication produced by a corporation in the circumstances described here. See H.R. Rep. No. 93-1239, 93d Cong., 2d Sess. 4 (1974).

This response constitutes an advisory opinion concerning application of the Act, or regulations 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 1979-70)