



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 28, 1983

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1983-26

J. Curtis Herge
Sedam & Herge
Suite 1100
8300 Greensboro Drive
McLean, Virginia 22102

Dear Mr. Herge:

This responds to your letter of August 26, 1983, requesting an advisory opinion on behalf of your client, National Conservative Political Action Committee ("NCPAC"), concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to NCPAC fundraising events that will feature a recording artist who may also make appearances on behalf of candidates for Federal office.

Your letter sets forth the following factual situation:

As part of its programs and activities, NCPAC, a multicandidate political committee, proposes to sponsor a series of fund-raising concerts and events in various locations across the country at which will be featured a well-known recording artist. The proceeds from such concerts and events will be used by NCPAC to influence elections for Federal office. Among the elections in question is the campaign for election to the United States Senate from State A, in connection with which NCPAC proposes to make independent expenditures in support of the nomination for election and, if he receives the nomination, the election of candidate B.

Your letter then poses several questions based on the foregoing:

(1) If the recording artist in question, as a volunteer, makes a public appearance at a fund-raising function for candidate B during the primary campaign and the

artist's travel expenses associated with that appearance are paid by the artist and fall within the provisions of 2 U.S.C. 431(8)(B)(iv), would the artist's appearance on behalf of candidate B affect the ability of NCPAC to make subsequent independent expenditures in support of candidate B?

(2) Would the answer to question (1) be different if the travel expenses incurred by the artist in connection with his appearance for candidate B exceeded \$1,000 with respect to the primary campaign and the balance were either (a) paid by the artist and reported as an in-kind contribution to the candidate, or (b) reimbursed to the artist by the candidate's campaign committee?

(3) In lieu of making an appearance for candidate B, assume that the artist makes an appearance at the convention of the State Party Committee of State A at which candidate B receives the Party's nomination for election. If the appearance were solely arranged by the State Party Committee and the artist's appearance did not involve advocating the election of candidate B, or the defeat of any other candidate, would NCPAC's ability to make independent expenditures in support of candidate B be affected if the artist's travel expenses were paid by the artist and fell within the provisions of 2 U.S.C. 431(B)(iv), or if the artist's travel expenses were reimbursed to the artist by the State Party Committee of State A?¹

In responding to these questions, you ask the Commission to make several assumptions. The first is that the artist's appearances at NCPAC fundraising concerts and events will not be made with the cooperation or prior consent of, or in consultation with, or at the request or suggestion of, candidate B or any agent or authorized committee of B. You ask the Commission to make this same assumption with respect to NCPAC's expenditures in support of candidate B. Other assumptions stated in your request are: the artist has no actual oral or written authority (express or implied) to make or authorize the making of expenditures on behalf of candidate B; the artist is not in a position in B's campaign organization where it would reasonably appear that in the ordinary course of campaign-related activities, he or she may authorize expenditures; and the artist has not been, and will not be authorized to raise funds for B, nor be an officer of B's authorized committee, nor receive any form of compensation from B, or B's committees or agents. An additional assumption implied in your request, but not explicitly stated, is that all of the artist's appearances at NCPAC's fundraising events will occur before any of his or her appearances on behalf of candidate B.²

The Commission's response to this advisory opinion request will take into account all the foregoing assumptions, and this opinion is issued on the basis that those assumptions conform to the actual facts of the situation proposed. To the extent that any facts are not as set forth herein,

¹ Your request parenthetically notes that the State Party Committee of State A will not be an authorized committee of B as of the Party's convention date.

² If the appearances of the recording artist at candidate B's events occur prior to the artist's appearances at NCPAC fundraising events, a complete description of those factual situations may be submitted in another advisory opinion request. The issues that may arise in such a chronological sequence are not addressed here.

NCPAC may not rely on this opinion, and its action in reliance on the opinion would not be taken in good faith. See 2 U.S.C. 437f(c). Similarly, NCPAC may not rely on this opinion to the extent there are other relevant facts which have not been set forth in the advisory opinion request because they were unknown when the request was submitted or were omitted for any other reason.

In response to your question (1), the Commission concludes that the presumption in its regulations, 11 CFR 109.1(b)(4)(i), would not apply in the following situation as regards NCPAC expenditures.³ A recording artist is featured at NCPAC sponsored fundraising concerts and events which are held to raise funds generally for NCPAC programs and not on behalf of any specific candidate(s) for Federal office. After the NCPAC appearances, the artist also appears on behalf of candidate B during B's primary election campaign. The artist's travel expenses connected with the appearance for B are paid by the artist and do not exceed \$1000. Subsequent to the artist's appearances for NCPAC and B, NCPAC makes expenditures for communications that expressly advocate B's nomination or election, or advocate the defeat of an opponent of B.

In these circumstances, the mere fact that the artist appeared only as a performer at NCPAC events, and then later at candidate B's event, would not result in application of the presumption in Commission regulations at 11 CFR 109.1(b)(4)(i), with respect to NCPAC expenditures in support of B that were made after the artist's appearance for B. The Commission is thus assuming, as your request asks, that the artist has no other involvement with the campaign, such as any knowledge of specific campaign plans and activities or the ability to exercise authority on its behalf, which would compromise the independence of any expenditures. In short, to avoid limitation under 2 U.S.C. 441a(a), NCPAC's expenditures to support candidate B must, of

³ The cited regulation is one of several definitions that explain the various elements of an "independent expenditure." It provides:

(4) "Made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of the candidate" means—

(i) Any arrangement, coordination, or direction by the candidate or his or her agent prior to the publication, distribution, display, or broadcast of the communication. An expenditure will be presumed to be made so when it is—

(A) Based on information about the candidate's plans, projects, or needs provided to the expending person by the candidate, or by the candidate's agents, with a view toward having an expenditure made;

(B) Made by or through any person who is, or has been, authorized to raise or expend funds, who is, or has been, an officer of an authorized committee or who is, or has been, receiving any form of compensation or reimbursement from the candidate, the candidate's committee or agent;

course, in fact be independent expenditures and satisfy all of the conditions under the Act and Commission regulations. 2 U.S.C. 431(17), 441a(a)(7)(B); 11 CFR Part 109.

In response to your question (2), the Commission refers you to the answer to question (1) since the method of payment for the artist's travel expenses on behalf of B does not require a different answer than is stated above in response to question (1). Similarly, the Commission's response to your question (3) is the same as that given to question (1). The fact that the artist's appearance is at the political party convention where B may be nominated, rather than at an event sponsored by B, is immaterial in the circumstances set forth in this request.

In view of the foregoing responses, the Commission does not reach those questions in your request that relate to meeting the burden by the presumption of is not CFR 109.1(b)(4). As indicated above, that presumption is not invoked in the situation presented here.

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)

Danny L. McDonald
Chairman for the Federal Election Commission