

MWE

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CONCURRING OPINION

BY

84 MAY 31 A 8: 19

COMMISSIONER LEE ANN ELLIOTT

IN

ADVISORY OPINION 1984-13

I concur with the results reached in Advisory Opinion 1984-13, however I believe the opinion improperly and unnecessarily classified the proposed NAM event as a partisan candidate appearance rather than a nonpartisan candidate appearance.

The requestor, NAM, went to great lengths to set out a factual scenario of the proposed event which would have had candidates speaking to the public on issues. Though the individuals were intended to appear within their capacity as candidates, neither of the sponsoring organizations would have become involved in any activity which expressly advocated a candidate's election or defeat. These sponsors also indicated that at no time during the event would they endorse or otherwise express any support for the candidates, and in fact advised all attendees that the appearance of the candidates was not to be construed as an endorsement by the sponsors of anyone's candidacy.

Notwithstanding these facts, the opinion concludes the event would inevitably be campaign related and involve partisan communication and thus not qualify as a nonpartisan candidate appearance event. The opinion reaches this conclusion based upon several factors: the event occurred shortly before the primary election for congressional candidates; the sponsors intended to seek assistance from the Republican National Committee in obtaining names of candidates to whom invitations to appear would be extended; invitation were to be extended only to Republican congressional candidates. I disagree with the analysis and the conclusion that would classify this as a partisan appearance.

The nonpartisan candidate appearance regulations at 114.4(b)(5) are intended to address campaign related activity by candidates when sponsored by corporations or labor organizations. It is distinguished from partisan

campaign appearances at 114.3(c)(2) in three major aspects. First, the permissible audience for partisan candidate appearances includes only the sponsor's restricted class, whereas nonpartisan appearances may include the restricted class and the employees of the sponsoring organization. Second, the sponsoring organization may express an endorsement or sponsorship of the particular candidate during a partisan candidate appearance, whereas such endorsement or indication of the sponsorship is not permissible under the nonpartisan regulations, 114.4(a)(2)(v). Third, under the provisions of the nonpartisan candidate appearance, if requested, the opponent of the candidate who has been invited to make the nonpartisan appearance must be provided a similar opportunity to make an appearance, whereas under the partisan appearance regulations no such similar opportunity must be afforded the candidate's opponent even though it may be requested. 114.4(a)(2)(i).

The only legitimate basis for not classifying the NAM event as a nonpartisan appearance is the requestor's failure to meet the first of these three requirements, namely the audience which NAM proposes includes the general public rather than only employees and the restricted class.

It is my opinion that the NAM has not gone beyond the permissible boundaries of the second and third requirements. Given the great lengths to which the NAM has indicated that they are not the sponsors nor will they take any endorsing posture at the event, they clearly fulfill the second of the three requirements. With regard to the third requirement, the fact that only Republican candidates have been invited does not cause the event to be a per se partisan appearance. The regulations permit an organization to invite a specific candidate of a particular party. It is only "if requested" by that candidate's opponent that the sponsor must provide a similar opportunity to appear. Therefore, the burden lies not with the hosting organization (NAM) but rather with the opposing candidate to make such a request. If a request is made of NAM and it is denied then the event clearly could no longer be deemed to be a nonpartisan event. In this case, however, no facts are before us that indicate the NAM has denied such a request. In fact, NAM apparently has not decided which Republican candidates they will invite let alone who their opponents are. Absent a denial of an opponent's request in this situation, the NAM event clearly fulfills the third requirement.

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The fact that the event will include members of the general public clearly causes it to be beyond the scope of both the partisan and nonpartisan regulations, and thus not permissible pursuant to 2 U.S.C. 441b. However, this is the only issue the Commission needed to reach in order to decide this opinion.

5-25-84

Date



LEE ANN ELLIOTT  
Commissioner