



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 21, 1986

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1986-26

J. Curtis Herge
Herge, Sparks, Christopher & Biondi
Suite 200
8201 Greensboro Drive
McLean, VA 22102

Dear Mr. Herge:

This responds to your letters of May 2, 1986, and June 26, 1986, on behalf of the National Conservative Foundation, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the financing and sponsorship of a convention.

You state that the National Conservative Foundation¹ ("the Foundation") is a nonprofit Virginia corporation and is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code.² Under its articles of incorporation, the Foundation's corporate purposes include the sponsorship of public discussion groups, panels, lectures, and forums in which members of the public, governmental leaders, and others participate and exchange views on public issues and

¹ The National Conservative Foundation was originally incorporated as the National Conservative Research and Education Foundation, but amended its name in 1990. John T. Dolan was the incorporator. You stated that the National conservative Foundation is organizationally or financially related to the National Conservative Foundation Endowment Fund, an organization described in Sections 501(c)(3) and 509(a)(3) of the Internal Revenue Code, and to the National Conservative Foundation Titleholding Corporation, an organization described in Section 501(c)(2) of the Internal Revenue Code.

² Section 501(c)(3) of the Internal Revenue Code grants tax-exempt status to corporations and foundations organized and operated exclusively for religious, charitable, or educational purposes (among others) and "which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office." 26 U.S.C. 501(c)(3).

the political structure of the United States. You also explain that the Foundation "does not endorse, support or oppose political candidates or political parties." The articles of incorporation also provide that the Foundation "shall have no members." Its directors and officers are John T. Dolan (chairman of the board and president); Maiselle Shortley (vice president), and L. Brent Bozell III (secretary and treasurer). Its offices are at 1001 Prince Street, Alexandria, Virginia.

You state that the Foundation plans to organize, sponsor, and finance a public forum to be known as the National Conservative Convention ("the Convention") to be held in Dallas, Texas, no later than July 1987. The general public will be invited to the Convention for the purposes of identifying and adopting positions on various foreign and domestic policy issues. It will consist of issue workshops and addresses leading to the adoption of a set of conservative principles or a platform. You state that the purposes of the Convention "have no direct relationship to or bearing upon the 1988 presidential nomination or election process."

You state that some of the individuals whom you intend to invite to address the Convention may have qualified under the Act as candidates for President for 1988 (or may be testing-the-waters with respect to such candidacy) at the time the Convention is held. You state that individuals will not be invited to address the Convention because they may be candidates. Instead, you explain that individuals will be invited to address the Convention because they are "acknowledged experts" or opinion makers "who formulate, articulate and mold positions on public policy issues." According to the proposed agenda you submitted, the Foundation intends to invite these persons to make keynote or issue addresses to the Convention: President Ronald Reagan, Vice President George Bush, Senators Robert Dole and Paul Laxalt, Congressman Jack Kemp, former senator Howard Baker, former governor Pierre DuPont IV, former ambassador Jeanne Kirkpatrick, former secretary of state Alexander Haig, and the Rev. M.P. "Pat" Robertson.³ You note, however, that none of these persons has yet been invited or has accepted any invitation to address the Convention and that the call for the Convention has not been published. You do ask that the Commission consider your request on the basis that these individuals will appear and address the Convention.

You state that the Convention's rules will provide that no participant will be identified as being a candidate for public office, that there will be no express advocacy of the election or defeat of any candidate, and that there will be no solicitation of funds for any candidate or candidate's committee. You add that the program's structure "will not promote or advance one candidate over another" and cite 11 CFR 110.13(b). You also state that the Foundation will not provide, or assist in providing, any space or facilities to speakers for their own use other than

³ Former governor Pierre DuPont IV has registered a principal campaign committee with the Commission with respect to the 1988 presidential election. Vice President George Bush, former senator Howard Baker, and the Rev. Pat Robertson have each publicly announced the formation of exploratory or testing-the-waters committees. Thus, your assumption that several of the individuals you intend to invite to address the Convention may be candidates for President in 1988 at the time of their appearances at the Convention is accepted for purposes of this Advisory Opinion.

lodging. You disclaim any responsibility, however, for any activity or event by any candidate or political committee outside the Convention proceedings on the basis that you will have no control over such "private" activities.

You note that the Foundation will offer to pay the transportation and travel expenses, and (if necessary) overnight accommodations of its invited speakers. You state that the Foundation does not intend to pay honoraria to any speakers but would consider requests for honoraria and may pay such honoraria in a manner consistent with 2 U.S.C. 441i. In order to finance the Convention, you state that the Foundation plans to solicit donations in any amount from the general public including corporations, government contractors, and foreign nationals.

In your May 2 letter, you stated that a Federal multicandidate political committee (which you did not identify) plans to invite attendees to participate after the Convention in a straw poll of support or opposition for candidates or potential candidates for President in 1988 and to seek pledges to support only those candidates whose positions are consistent with the platform adopted by the Convention. In your June 26 letter, you withdrew this post-convention activity from your request on the basis that no political committee will participate in the organization or activities of the convention and that the Foundation will not sponsor, and disclaims responsibility for, any activities by any political committee.

You ask whether because several speakers at the Convention may be candidates for President in 1988, the funds the Foundation raises and spends in sponsoring the Convention as well as the funds donated by the general public including corporations, government contractors, and foreign nationals will be subject to the provisions of the Act.

The Act prohibits a corporation, including a nonprofit corporation, from making contributions or expenditures in connection with a Federal election. 2 U.S.C. 441b(a).⁴ This prohibition includes both direct and indirect payments or gifts of money, services, or anything of value to a candidate. 2 U.S.C. 441b(b)(2). Furthermore, as Commission regulations demonstrate, the Foundation's recognition by the Internal Revenue service as a 501(c)(3) organization does not foreclose the Commission's consideration or determination of the issues raised in this request that fall within the purview of the Act and regulations.

This prohibition prohibits the corporate financing of public appearances by candidates that are campaign related unless they are specifically excepted by the Act or Commission

⁴ A similar prohibition also applies with respect to government contractors and foreign nationals. See 2 U.S.C. 441c and 441e. The Act places limitations on contributions by persons and political committees. See 2 U.S.C. 441a(a).

regulations.⁵ Commission regulations permit a corporation to sponsor partisan candidate appearances before the corporation's executive and administrative personnel and their families or, in the case of membership organizations and nonstock corporations, before members and their families. 11 CFR 114.3(c)(2). Commission regulations also permit a corporation to sponsor nonpartisan candidate appearances before the corporation's employees and their families or its members and their families. 11 CFR 114.4(a)(2). The Foundation is a nonstock corporation, but it has no members. The candidate appearances that it proposes to sponsor are before the general public rather than the specified groups for either partisan or nonpartisan appearances. Therefore, these exceptions will not apply to the Foundation's proposed Convention.

Commission regulations also recognize that nonprofit 501(c)(3) or (c)(4) organizations that do not support, endorse, or oppose political candidates or political parties⁶ may jointly or on their own sponsor and conduct nonpartisan activities directed to the general public, such as nonpartisan voter registration and get-out-the-vote drives or voter guides that do not favor one candidate or political party over another. Other corporations may donate funds to such a qualified nonprofit organization for certain permitted nonpartisan activities. 11 CFR 114.4(b)(5) and (c). Commission regulations also recognize that a nonprofit 501(c)(3) or (c)(4) organization that does not support, endorse, or oppose political candidates or political parties may stage nonpartisan candidate debates. See 11 CFR 110.13(a); 11 CFR 114.4(e). The structure of such debates is left to the staging organization provided that such debates include at least two candidates and that they are nonpartisan in that they do not promote or advance one candidate over another. 11 CFR 110.13(b). Other corporations or individuals may donate funds to a qualified nonprofit organization to defray the costs of staging such debates. 11 CFR 100.7(b)(21); 114.4(e)(1) and (3).

Your proposed activity is not a voter guide, voter registration drive, or get-out-the-vote drive. You have not structured or presented the Convention as a candidate debate, although you state that its structure will not promote or advance one candidate over another and cite 11 CFR

⁵ In any event, the Foundation's plan to pay transportation, travel, and lodging expenses for its speakers presents a different question. In the case of candidates, payments for expenses for campaign-related travel and lodging, including for testing-the-waters activities, constitute campaign expenditures. See 11 CFR 106.3 and 9034.7; Advisory Opinions 1985-6 and 1985-40. The exceptions in Commission regulations for certain campaign appearances and nonpartisan activities with respect to the Act's prohibition on corporate contributions and expenditures do not include the payment of travel and lodging expenses for the candidates who participate in such events. See generally 11 CFR 114.3 and 114.4. Moreover, candidates who use corporate aircraft, or other corporate means of transport, to make campaign appearances are required to pay for such use to avoid a corporate contribution. 11 CFR 114.9(e). Accordingly, the Foundation's payment of transportation, travel, and lodging expenses to candidates from treasury monies will constitute contributions and expenditures prohibited by the Act. This prohibition also applies with respect to persons who may be testing-the-waters. See 11 CFR 100.7(b)(1); Advisory Opinion 1985-40.

You also state that the Foundation does not plan to pay honoraria to its speakers but that it may consider requests for honoraria. At this time, the Commission views any question regarding the payment of honoraria as hypothetical. See 11 CFR 112.2(b).

⁶ The Commission has previously stated that a 501(c)(3) or (c)(4) organization that establishes a political committee will not qualify as a nonprofit organization that does not support, endorse, or oppose political candidates or political parties. See Advisory Opinion 1984-17.

110.13(b). Thus, the Commission cannot conclude that the Foundation's proposed activity qualifies as a nonpartisan activity or candidate debate.

In a variety of circumstances the Commission has addressed whether or not the public appearances of an individual who had qualified as a candidate under the Act were campaign related. The Commission has taken the position that public appearances by candidates at such events as charitable functions, public affairs programs, constituent service activities, and testimonials, or as part of their private employment will, nevertheless, be campaign-related if such events include any express advocacy of the election or defeat of any candidate or the solicitation of contributions to any candidate or political committee. The Commission has also concluded that the absence of express advocacy or solicitations will not preclude a determination that public appearances by candidates are campaign-related. See, e.g., Advisory Opinions 1984-13, 1982-16, 1981-37, 1980-89, 1980-22, 1980-16, 1978-4, and 1977-42.

In this instance, the Commission concludes that your request lacks sufficient factual specificity to conclude that candidate appearances will not be campaign related (and thus remains hypothetical) so as to permit the Commission to give advance approval to your proposed method for defraying the costs of the Convention. See 11 CFR 112.1(b) and (c). Furthermore, the relevant facts are not present for the Commission to determine whether the Foundation qualifies as a nonprofit 501(c)(3) organization that "does not support, endorse, or oppose political candidates or political parties." See Footnote 6.

The Commission does not purport to express any opinion with respect to the Foundation's qualifications for tax-exempt status under 26 U.S.C. 501(c)(3) or any other tax ramifications, since such issues are outside its jurisdiction.

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)

Joan D. Aikens
Chairman for the
Federal Election Commission

Enclosures (AOs 1986-6, 1985-40, 1984-17, 1984-13, 1982-16, 1981-37, 1980-89, 1980-22, 1980-16, 1978-4, and 1977-42)