



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1987-8

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Dear Messrs. Dickinson, Ross, and McCormick:

This responds to your letters of March 9, 1987, requesting an advisory opinion on behalf of American International Group, Inc. ("AIG"), and U.S. News & World Report, L.P. ("U.S. News"), concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to AIG's sponsorship of a series of interviews with presidential candidates for the 1988 election cycle.

You state that AIG, a Delaware corporation, is a holding company which, through its subsidiaries, is primarily engaged in a broad range of insurance and insurance-related activities in the United States and abroad. You state that AIG advertises in a wide variety of media to enhance its image and promote its products and services. You note that in the past, AIG has sought out advertising opportunities related to the public interest, participating in projects involving the activities of the League of Women Voters and supporting, through matching grants, public education television and radio programs.

According to your request, U.S. News is a limited partnership organized under the laws of the State of Delaware with its headquarters in Washington, D.C. You state that for over fifty years, U.S. News has been an internationally prominent news and information gathering organization.

During its early years, U.S. News' principal medium for dissemination of news and information was the weekly news magazine, U.S. News & World Report ("U.S. News Magazine"). You state that U.S. News now disseminates news and information through a wide variety of media forms, including radio, television, newsletters, and books, in addition to its traditional U.S. News Magazine.

Your request states that U.S. News has formulated a "Presidential Candidate Interview" project ("the Project") profiling certain candidates for the presidency of the United States in the 1988 election. The idea for the Project originated with Mr. David Frost, a prominent journalist. U.S. News has developed this concept into the multimedia Project described in your request. You state that the Project, as developed by U.S. News, is essentially an expansion of similar coverage undertaken by U.S. News during the 1980 and 1984 presidential election cycles and a television series produced by Mr. Frost in 1968. You note that in 1980 and 1984, U.S. News conducted a number of interviews with presidential candidates.

You state that the Project will be centered around interviews of approximately twelve major candidates for the Republican and Democratic Party nominations. If a major third party candidate emerges, that person may also be included. The interviews, as presently contemplated, will be conducted by David Frost and will also include background information about each candidate. You state that the Project will encompass three distinct media:

- (1) publication of the interviews in U.S. News Magazine;
- (2) presentation, during the same week that the magazine coverage appears, of the interviews and background material in a television series that would profile the same candidate as the candidate presented in U.S. News Magazine; and
- (3) publication of a book with excerpts from all interviews.

You state that U.S. News and AIG have entered into a Sponsorship Agreement ("the Agreement") pursuant to which AIG will be the Advertising Sponsor of the Project. You state that AIG will have no control over, nor right to participate in, decisions related to selection of the candidates, issues discussed, or any substantive details related to the Project.

You describe the various components of the project as follows:

a. The Magazine Series

The cornerstone of the Project is the weekly series of articles that will appear in U.S. News Magazine (the "Magazine Series"). The Magazine Series will consist of articles, including excerpts from the candidate interviews and additional background material, as well as pictures. Each article will appear in the regular weekly issue of U.S. News Magazine and will be published in the issue released at the beginning of the week during which the corresponding television program is aired.

Although the exact schedule has not yet been determined, it is anticipated that twelve articles will be published on consecutive weeks prior to the New Hampshire primary in February 1988. It is anticipated that a thirteenth article featuring highlights from the interviews will be published prior to the first of the Republican and Democratic national conventions.

b. The Television Series

The second component of the Project will be the production of a series of syndicated television programs (the "Television Series"). The Television Series will consist of thirteen individual one-hour programs aired in the same week that the magazine coverage appears. The Television Series will be aired nationally.

Each of the first twelve programs will feature excerpts from the interview of one of the Candidates as set out in the Magazine Series. The final program will feature only the leading Candidates at that time.

U.S. News will be exclusively responsible for the costs of production of the Television Series. AIG will have no control over, nor any participation in the production or distribution decisions related to the Television Series. AIG will not have any control over, nor right to participate in, the selection of candidates to be featured or any timing and scheduling matters related to the airing of the Television Series. Finally, AIG will have no copyright or other such rights in the Television Series. All copyright and other similar rights will remain the exclusive property of U.S. News, as will all materials produced as part of the Project, including out-take material from the Television Series. AIG has no right to participate in any rebroadcast of the Television Series or any reprint of the Magazine Series.

c. The Book

The third element of the Project is the publication of a book, which will be released after completion of the candidate interviews ("the Book"). The Book will consist of expanded excerpts from the interviews of all the Candidates, as well as additional background information and photographs. The Book will feature a full-color, magazine-style layout, published in a large (8 1/2" x 11"), soft-cover format and will contain no less than one-hundred pages. The Book will be published promptly after the airing of the second-to-last program of the Television Series and the publication of the second-to-last article in the Magazine Series. AIG will have no control over, nor right to participate in, any decisions related to the content of the Book.

U.S. News will distribute one complimentary copy of the Book to each delegate to the Republican and Democratic Conventions. U.S. News and AIG will

also distribute complimentary copies of the Book to current and prospective clients, employees, and business associates. The Candidates would receive no more than several complimentary copies of the Book as a courtesy. U.S. News expects to sell other copies of the Book to the extent of perceived market demand.

As noted earlier, a "Sponsorship Agreement" has been entered into by U.S. News and AIG with respect to the proposed Project. The Agreement provides that in exchange for a fee, AIG will be sole and exclusive "Advertising Sponsor" of the Project, although other advertisers will purchase magazine space and air time for commercial advertising in the Magazine Series and the Television Series. You state that AIG receives, as Advertising Sponsor, the following advertising benefits:

- a. A specified amount of advertising space in advertising will be positioned opposite the first page of the article in the Magazine Series. AIG shall receive one such advertising space in both the English and Chinese language versions of U.S. News Magazine.
- b. Sponsorship billing on the sign-on and sign-off billboards for each domestic and international (if any) airing of each program in the Television Series. AIG also receives a specified portion of commercial advertising time in each domestic airing of each sixty-minute program in the Television Series.
- c. A specified number of advertisements in the Book, which will be the only commercial advertisements in the Book. AIG will receive sponsorship billing on the front cover and the first page of the Book. Of the 125,000 copies of the Book scheduled to be published, AIG will receive 25,000 copies free of charge for its distribution. AIG shall also receive a specified percentage of the net proceeds from the sale of the Book.
- d. Finally, AIG will be identified as the sponsor of the Project in all press releases and publicity activity related to the Project. AIG is also entitled to participate in all press conferences held in connection with the Project and is guaranteed that it will be the only advertiser from the insurance industry.

You note that in return for its designation as sole and exclusive Advertising Sponsor of the Project, AIG will pay to U.S. News a sponsorship fee ("the Sponsorship Fee") in the amount of \$4,377,500. You state that the Sponsorship Fee was negotiated on an arm's length basis and that AIG believes it is commercially reasonable, given the advertising benefits AIG will obtain from the Project. You note that U.S. News would have gone forward with the Project regardless of AIG's participation, and that U.S. News first approached AIG only because AIG had been a regular advertiser in U.S. News Magazine over the last several years.

In light of these facts, you ask whether AIG's sponsorship of the proposed Project would be permissible under the Act and Commission regulations.

The Act prohibits any corporation from making a contribution or expenditure in connection with any presidential election, or in connection with any primary election or political convention or caucus held to select presidential candidates. 2 U.S.C. 441b(a). For purposes of this provision, the term "contribution or expenditure" includes any direct or indirect payment or gift of money or services, or anything of value, to any candidate or campaign committee in connection with any Federal election. 2 U.S.C. 441b(b)(2).

In its general definitions, the Act also states that the term "contribution" includes any gift of money or anything of value "made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. 431(8)(A)(i). The term "expenditure" is defined to include any payment or gift of money or anything of value "made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. 431(9)(A)(i). The Act specifically exempts from the definition of "expenditure," any news story, commentary, or editorial "distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication..." 2 U.S.C. 431(9)(B)(i). Commission regulations similarly exclude from the definitions of "contribution" and "expenditure," any "cost incurred in covering or carrying" a news story, commentary, or editorial by any broadcasting station, magazine or other periodical publication. 11 CFR 100.7(b)(2), 100.8(b)(2).

The Commission concludes that the proposed activity of U.S. News with respect to the Magazine Series and the Television Series would be covered by the news story exemption in 2 U.S.C. 431(9)(B)(i) and therefore would not result in a contribution by U.S. News to any of the featured candidates. Furthermore, the Commission concludes that AIG's sponsorship of the Magazine Series and the Television Series would not result in a contribution or expenditure in connection with a Federal election. As Advertising Sponsor of these aspects of the Project, AIG will not exercise any control or influence with respect to the selection of the presidential candidates to be interviewed by U.S. News. In addition, AIG will have no control or influence as to the nature or conducting of the interviews or the selection of interview excerpts to be included in the various aspects of the Project. AIG will have no control over the timing of the publication of the Magazine Series or the broadcasting of the Television Series, and will have no control over the markets in which the Television Series will be shown. Finally, AIG will have no responsibility for the production costs of the Project. Rather, AIG is only responsible for payment of the Sponsorship Fee, and therefore will be involved in the Project solely as a commercial advertiser. You note, in this connection, that U.S. News has insisted that its "editorial objectivity and independence be maintained absolutely." For these reasons, the Commission views AIG's proposed sponsorship of the Magazine Series and the Television Series as a permissible activity under the Act and Commission regulations.¹

With respect to AIG's sponsorship of the Book, the Commission notes that the "news story" exemption does not apply to distribution through facilities other than a broadcasting station, newspaper, magazine, or other periodical publication. 2 U.S.C. 431(9)(B)(i). Because the Book does not fit within any of these categories, it would not qualify for the "news story" exemption. The Commission also notes, however, that your proposal states that U.S. News plans to distribute one complimentary copy of the Book to each delegate to the Republican and Democratic Conventions. Under the Commission's regulations regarding presidential nominating conventions, local businesses are permitted to provide, at no charge, "any of their products or

services in the form of samples, discount coupons, promotional items, such as maps, pens, or pencils, with the business' name imprinted on the item, to those attending the convention functions." 11 CFR 9008.7(c)(2)(i). The regulation provides further that such items must be of nominal value, provided solely for bona fide advertising or promotional purposes, and provided in the ordinary course of business. Id.

The Commission concludes that because of the nationwide distribution and availability of U.S. News Magazine, the proposed promotional distribution of complimentary copies of the Book, which is of nominal value, to delegates to the Republican and Democratic conventions would be viewed as promotional activity to create goodwill for the local business operations of U.S. News Magazine. Therefore, the described distribution to the delegates would not be prohibited by 2 U.S.C. 441b. See Advisory Opinion 1980-53. Furthermore, the Commission concludes that AIG's sponsorship of the Book by means of commercial advertising would not result in a prohibited corporate contribution or expenditure in connection with a Federal election, since AIG will merely be acting as a sponsor of U.S. News' permissible activity. With respect to your proposal to provide several complimentary copies² of the Book to participating candidates as a courtesy, the Commission concludes that providing these complimentary copies represents a token of U.S. News' appreciation for the candidates' participation in the Project. Accordingly, such a gift in the circumstances presented would not be viewed as a contribution to the candidates involved.

Finally, with respect to AIG's distribution of 25,000 copies of the Book, which it will receive pursuant to the Agreement, the Commission concludes that distribution limited to AIG's current and prospective clients, employees, and business associates, as stated in the request, would be permitted under the Act and Commission regulations. This opinion does not, however, address any issues that may arise under the Act and regulations with respect to AIG's distribution of the Book in circumstances different from those expressly set forth in your advisory opinion request and this opinion.

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)

Scott E. Thomas
Chairman for the Federal Election Commission

Enclosures (AOs 1980-109, 1980-90, and 1980-53)

1/ The situation you have presented is distinguishable from that presented in Advisory Opinion 1980-90, which involved a corporation's production and distribution (to broadcast stations) of

videotaped interviews with presidential candidates. The Commission concluded that the news story exemption was not available to the corporation in that case because it was not a press entity engaged in the normal press-business activity of covering and commenting on political campaigns. Compare Advisory Opinion 1980-109.

2/ The Commission assumes that this means no more than ten copies of the Book for each presidential candidate who is the subject of an interview.