



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 14, 1991

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1991-17

The Honorable Gary A. Franks
United States House of Representatives
1609 Longworth House Office Building
Washington, DC 20515-0705

Dear Mr. Franks:

This responds to your letter dated April 23, 1991, with enclosures, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to your appearance in a video tape project produced by the Committee for Citizen Awareness and financed by corporate sponsors.

You state that the Committee for Citizen Awareness ("CCA") has invited you to appear in a video tape that it will produce and distribute throughout the congressional district from which you were elected in 1990. CCA is a nonprofit corporation that was established to address the problem of the declining level of voter participation in United States elections and "to encourage good citizenship in our democracy." CCA is listed by the Internal Revenue Service as a tax exempt organization under 26 U.S.C. 170(c). To maintain its eligibility for this special exempt status requires that CCA may not participate or intervene in (including the publishing or distributing of statements) any political campaign on behalf of, or in opposition to, any candidate for public office. See 26 U.S.C. 501(c)(3).

The CCA tape will be very similar to others that CCA has produced since 1985 and in which over 80% of the members of Congress have appeared. In response to a request from the Office of General Counsel, your office submitted two typical videos obtained from CCA. One features Rep. Barbara Kennelly and the other Rep. Nancy Johnson. Each tape runs for approximately 20 minutes, and the Member of Congress appears in four separate segments that are each between 30 and 60 seconds long.

The first segment is near the beginning of the tape. The Member gives a brief introduction of herself and mentions generally what the tape is about. She describes the location of the congressional district she represents and states the year she was first elected to Congress. The next segment begins approximately five minutes into the tape; the Member gives a 30 to 60 second description of a pending issue that she believes is most pressing within Congress. The third segment comes eight minutes into the tape and covers the committee assignments the Member has. It includes mention of the primary topic those committees will deal with in the current year. During the final segment, approximately 60 seconds long near the end of the tape, the Member compliments her congressional colleagues for effectively representing their constituents in the Congress. She closes by reminding viewers that she and her staff are available in the district or in Washington to hear their viewpoints and to represent them. She invites letter or telephone inquiries to her district office or to Washington.

The other contents of the tape feature the narrator, Howard K. Smith, describing and showing "behind the scenes activities in the U.S. Congress -- how it really works, what role a citizen can play, the role of Congressional staff, and how a bill actually becomes law." Video portions include committee hearings, debate in the House chamber, office scenes depicting an unidentified Member conferring with staff personnel and meeting constituents. There are also three brief (less than 60 seconds) sequences that appear to be campaign events depicting unidentified Members or candidates. The video or audio portions do not in any other respects mention any campaign activities, or present any election related messages or partisan endorsements.

CCA derives funding for the video project from sponsor corporations that are based or do business in the featured Member's home state, and CCA allows each such corporation to have its representative appear briefly in the video. (Your office has informally advised Commission counsel that Uniroyal plans to sponsor your CCA video.) The representative speaks about declining voter participation in the United States over several past decades and cites the voter turnout rate in the last presidential election. He characterizes low voter turnout as a serious problem and stresses the importance of voting and other forms of citizen involvement in "our democracy." No specific future election, political party, candidate, or officeholder is mentioned in this context. In addition, the corporate personnel do not appear jointly with the Member in any segment.

Although CCA obtains the Member's consent to a particular corporate sponsor for that Member's video, CCA directs and controls both the production and the distribution of the video. Upon distribution by CCA the video is viewed by high school students, civic and religious groups, cable television viewers, company employees, and others.

The fact that the CCA video, featuring you as a Member of Congress, will have corporate sponsorship and financing is the basis for your stated concern and your inquiry to the Commission. You ask, "does the corporate subsidy translate into an in-kind or improper donation to my potential reelection campaign?"

As you know, the Act prohibits a corporation from making any contribution or expenditure in connection with a Federal election. 2 U.S.C. 441b(a); 11 CFR 114.2(b). The term contribution

(or expenditure) includes "any direct or indirect payment, distribution, loan, advance ... or gift of money, or any services, or anything of value ... to any candidate, campaign committee, or political party or organization in connection with any [Federal] election" 2 U.S.C. 441b(b)(2); 11 CFR 114.1(a)(1). The phrase anything of value includes goods and services provided without charge, or at less than the usual and normal charge for them. 11 CFR 100.7(a)(1)(iii)(A).

Commission regulations also include several exceptions to the definitions of contribution. If a particular corporate activity related to a Federal election comes within an exception, the costs of that activity would not result in a prohibited contribution or expenditure. Of particular relevance here, are Commission regulations that permit a corporation to finance certain nonpartisan voter education or voter turnout messages and activities.

The regulations permit a corporation to finance nonpartisan voter registration or get-out-the-vote communications that are directed to the general public. 11 CFR 114.4(b)(2). The Commission considers several factors in determining whether the communication is nonpartisan: it does not name or depict any candidate or it names all candidates for a particular Federal office; the message does not name any political party except it may give the political party affiliation of all candidates running for a particular Federal office if it identifies all of them; the message is limited to urging acts such as voting and registering to vote and to describing hours and places where the public may vote or register to vote. 11 CFR 114.4(b)(2)(i)(A), (i)(B), (i)(C). A corporation can make a qualified nonpartisan communication through broadcast media or a similar means of general public communication. 11 CFR 114.4(b)(2)(ii).

In addition to the foregoing nonpartisan voter education communications, the regulations also permit corporations to finance and sponsor nonpartisan campaigns (or drives) to assist the public in registering to vote, or in getting to the polls on election day. To assure the nonpartisan nature of such activities they must comply with the conditions set forth in Commission regulations at 11 CFR 114.4(c)(1). Among these conditions are several requirements: the nonpartisan voter turnout campaign must be jointly sponsored with a nonprofit organization which is both exempt from Federal taxation under 26 U.S.C. 501(c)(3) or (c)(4) and does not support, endorse or oppose candidates or political parties; the activity must be conducted by the qualified tax exempt organization; the services are made available without regard to the voter's political preference. 11 CFR 114.4(c)(1)(i)(A), (i)(B), (i)(C). The regulations also permit a qualified tax exempt entity to accept donations of funds from corporations, as well as the use of their personnel and facilities, for use in conducting these nonpartisan voter campaigns. 11 CFR 114.4(c)(2), (c)(3). Furthermore, Commission regulations require that all materials prepared for public distribution in connection with the nonpartisan voter campaign include the full names of all sponsors of the activity. 11 CFR 114.4(c)(5).

The CCA video project has some aspects that implicate the Act and Commission regulations, and some aspects that do not. As to the latter, the video's description and illustration of the process by which members of Congress perform their legislative and constituent service functions as elected Federal officeholders does not entail the making of a contribution or expenditure for purposes of the Act and Commission regulations. The Act's broadly stated general rule prohibiting contributions and expenditures by corporations applies to gifts or advances or loans of money, or

other things of value, that are made "in connection with" an election to Federal office. It would therefore not prohibit donations made and used to defray the costs of producing and distributing a CCA video which is restricted in its subject matter to explaining the duties and functions of a Member of Congress or explaining the functions and procedures of Congress itself. The Act and regulations do, however, apply if, as here, a corporation finances messages distributed to segments of the general public which include references to Federal elections or to voting in Federal elections.

The CCA video is produced and distributed as part of CCA's ongoing effort to improve voter turnout rates in the United States. The corporate sponsors who appear in the video make several references to the importance of voting in our democracy, and CCA itself has measured the effectiveness of its video project by reporting, based on the responses of student viewers, that after viewing the tape students feel they know enough to cast a vote. Each Member who appears in the video also joins, in effect, in CCA's endeavor to enhance citizen participation through improved voter turnout and by contacting their elected Members. The Member's explanations of the essential functions and activities of the Congress and its membership are also geared to increased citizen involvement which includes voting in Federal elections.

For the reasons explained below and subject to the conditions stated therein, the Commission concludes that the Act and Commission regulations permit your participation in the described CCA video project.

CCA is listed by the IRS as a tax-exempt organization that is prohibited from participating or intervening in any political campaign (including the publishing or distributing of statements) on behalf of, or in opposition to, any candidate for public office. The Commission will presume, for purposes of this opinion, that CCA conducts its activities in compliance with all such restrictions as set forth in the Internal Revenue Code and IRS regulations. In addition, the CCA video does not name or depict any candidate for Federal office in that the Member's appearance and messages do not indicate whether or not the Member is a candidate. Indeed, the only reference made by the Member to any election is her mention of the year in which she was first elected to Congress. The video includes no reference to any political party or to the party affiliation of the Member. The election references or voting messages in the video are limited to brief portrayals of political campaign scenes in which no Member or political party is identified and to the appeal of the sponsoring corporation's representative for greater citizen participation by increased voter turnout in future elections. 11 CFR 114.4(b)(2).

The situation presented here primarily involves communications to the general public financed by a corporation. However, to the extent the CCA video project may have elements of a get-out-the-vote drive or campaign directed to the public, it also complies with relevant Commission regulations. 11 CFR 114.4(c). The project is conducted and controlled by CCA, a 501(c)(3) tax exempt entity, and distribution of the videos does not appear to reflect any partisan considerations. Your request letter indicates that the video featuring you "will be distributed to schools in my district, for their use." The Commission will presume that such distribution will be made without regard to the political demographics (e.g. voter registration or past voting behavior) of the voting population where each school is located and that it will be made without any consideration of the future calendar for Federal elections in which you are a candidate. In

addition, the funds donated by Uniroyal, the corporate sponsor of the CCA video that will feature your participation, appear to comport with Commission regulations allowing such donations to a qualified tax exempt entity. 11 CFR 114.4(c)(2), (c)(3), (c)(5).

The Commission does not reach any issues here concerning possible application of the Act or Commission regulations to CCA's video distribution procedures generally, or to the process CCA uses to select and match corporate sponsors with particular members of Congress. This is because you have not presented a complete factual description of the CCA corporate sponsorship and video distribution programs and because CCA is not a requesting party to this opinion. See 2 U.S.C. 437f(a)(1) and 11 CFR 112.1(b), 112.1(c). In addition, the Commission expresses no opinion as to any possible application of House rules to the described activity because those issues, if any, are not within its jurisdiction. See 2 U.S.C. 437c(b), 437f(a)(1).

This response constitutes an advisory opinion concerning application of the Act and Commission regulations to the specific transaction or activity set forth in your request. 2 U.S.C. 437f.

Sincerely,

(signed)

John Warren McGarry
Chairman for the Federal Election Commission