



FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 13, 1992

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1992-5

The Honorable James P. Moran
1523 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Moran:

This responds to your letters of January 15 and 23, 1992, requesting an advisory opinion regarding the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to your participation in a series of public affairs forums televised on local cable stations.

You indicate that you are a 1992 candidate for re-election in the 8th Congressional District of Virginia and that you plan to participate in a series of public affairs forums being televised on local cable programs in your district. You plan to appear in two such monthly series of programs. The first series, entitled "A Capital Report from Congressman James P. Moran," is being produced by Jones Intercable located in Alexandria, Virginia. The second series, "A Conversation with Jim Moran," will be produced by a retired Federal employee from your district for Fairfax County Access Channel 10. You have provided the Commission with video and written materials illustrating the content of these productions.

You state that "[e]ach station directs, produces, records, and has complete financial control over the program" and "[e]ach station has all television rights." You further state that both productions will relate "exclusively to issues before Congress and scrupulously avoid any political connection." You also affirm that "[n]either myself nor my campaign committee will receive any financial benefit from the program[s] or from the stations affiliated with the program[s]."^{1/}

You explain that you are requesting an opinion "to ensure that my participation in these programs does not in any way constitute a violation of Federal election laws."

The Act defines "contribution" and "expenditure" to include gifts of anything of value and any purchase or payment made for the purpose of influencing the nomination or election of any person to Federal office. 2 U.S.C. 431. Any gift or payment constituting a contribution or expenditure is required to be disclosed under the Act. 2 U.S.C. 432 and 434. Contributions are also subject to limitations and, in some cases, are prohibited. See 2 U.S.C. 441a, 441b, 441c, 441e, and 441f.

The Commission has frequently considered whether particular activities involving the participation of a Federal candidate, or communications referring to a Federal candidate, result in a contribution to or expenditure on behalf of such a candidate under the Act. The Commission has determined that financing such activities will result in a contribution to or expenditure on behalf of a candidate if the activities involve (i) the solicitation, making or acceptance of contributions to the candidate's campaign, or (ii) communications expressly advocating the nomination, election or defeat of any candidate. Advisory Opinions 1988-27, 1986-37, 1986-26, 1982-56, 1981-37, 1980-22, 1978-56, 1978-15, 1977-54 and 1977-42. The Commission has also indicated that the absence of solicitations for contributions or express advocacy regarding candidates will not preclude a determination that an activity is "campaign-related." Advisory Opinions 1992-6, 1990-5, 1988-27, 1986-37, 1986-26, 1984-13 and 1983-12.

In prior opinions, the Commission has concluded that contributions or expenditures for Federal candidates would not result in circumstances involving candidates serving as chairpersons of political, charitable and issue advocacy organizations (Advisory Opinions 1978-5, 1978-15 and 1977-54, respectively), or in situations involving a candidate appearance endorsing a candidate for local office in television advertisements (Advisory Opinion 1982-56), or a candidate appearance as a speaker in a college speaker program (Advisory Opinion 1992-6).

Advisory Opinion 1977-42 is of particular relevance to your situation. In that opinion, a candidate for Federal office had participated in various radio public affairs programs. The candidate inquired whether these activities had reporting or other consequences under the Act. In these radio programs, the candidate either moderated discussions with public officials regarding the issues of the day or participated in the discussions through a "call in" format. The Commission concluded that the production or broadcasting of the programs did not have reporting consequences or result in contributions to the candidate since the radio conversations were not conducted for the purpose of influencing the speaker's election and did not contain express advocacy or solicitation for the candidate's campaign. Advisory Opinion 1977-42.

Your January 23 submission includes both a video tape of the January program of "A Capital Report from Congressman James P. Moran" and a 'fact sheet' of the proposed Channel 10 series.^{2/} In the video of "A Capital Report from Congressman James P. Moran," no mention is made of your campaign or election to Federal office nor did the program contain any otherwise promotional elements such as banners or campaign decorations. Furthermore, the program did not include any message that solicits contributions. The content of the program was strictly limited to issues before the Congress or issues of relevance to your district. The 'fact sheet' of "A Conversation with Jim Moran" likewise indicates that these programs will be issue oriented and devoid of campaign related material or content.

Based on a review of the above materials and your representations, the Commission concludes that your participation in the two cable public affairs programs is not prohibited by the Act. It is the Commission's opinion that the production and broadcasting of the programs will not constitute either a contribution or expenditure on your behalf as defined in the Act and Commission regulations.

The Commission expresses no opinion as to any application of the Communications Act of 1934, as amended, or Federal Communications Commission rulings and regulations to your participation in these programs as these issues, if any, are outside the Commission's jurisdiction. For the same reason, the Commission does not express an opinion regarding the application of the rules of the House of Representatives to your activity.

This response constitutes an advisory opinion concerning the 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,

(signed)

Joan D. Aikens
Chairman for the Federal Election Commission

Enclosures (AOs 1992-6, 1990-5, 1988-27, 1986-37, 1986-26, 1984-13, 1983-12, 1982-56, 1981-37, 1980-22, 1978-56, 1978-15, 1978-5, 1977-54, and 1977-42)

ENDNOTES

1/For purposes of this opinion, the Commission also assumes that no one connected with your campaign committee will be involved in the production of these programs.

2/The video tape program, 30 minutes long, features a discussion by Congressman Moran of certain real estate and economic issues as they impact the 8th district. There is also discussion of various tax and banking bills pending before the Congress. The 'fact sheet' describes the length and format of each Channel 10 program in which Congressman Moran will participate and the topics to be discussed. These programs will run from February to June and will cover topics ranging from health care to transportation issues. The information provided restates that the producers will have full editorial control over each show and will also have sole ownership rights, though our office "can obtain a copy of the show by supplying a blank tape." The 'fact sheet' states that the sole purpose of the program is to discuss issues before the Congress and "make that discussion available to the public through this cable television program."