

CONCURRING OPINION
OF
COMMISSIONER JOAN D. AIKENS
TO ADVISORY OPINION 1992-6

Advisory Opinion 1992-6 was submitted by New York speakers Bureau, Inc., on behalf of David Duke, a candidate for federal office. Mr. Duke had accepted an invitation from Vanderbilt University's IMPACT Symposium, a student group that "hosts a series of lectures by national leaders on a variety of issues each February," to speak to the student body, faculty and some members of the general public. The request stated that Mr. Duke's primary source of income for many years had been derived from the lecture circuit and all funds paid to Mr. Duke by Vanderbilt for honorarium and travel expenses for the IMPACT lecture would be received "as personal income." They also stated that the "fees would not be used for any purpose whatsoever relative to his [presidential] campaign." The requester further clarified that Mr. Duke and his campaign representatives would not in any manner utilize this lecture event for the purpose of influencing his presidential campaign.

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Based on these facts and circumstances, plus the additional assurances provided by the requester, I voted to approve the draft's conclusion that Vanderbilt's payment of an honorarium and related travel expenses would not automatically constitute a contribution or expenditure for purposes of the Act and Commission regulations.

However, I disagreed with that portion of the opinion that adopts the analysis of Advisory Opinion 1990-5 to qualify this opinion. In my opinion, AO 1990-5 is only remotely relevant to this advisory opinion request in that Mr. Duke, the lecturer/candidate, has clear control over his speech. That obscure link does not justify the level of precedential value accorded AO 1990-5.

Secondly, as to the substance of AO 1990-5, that AOR was submitted by a candidate for federal office, Margaret Mueller, who had been a candidate for Congress in the two previous elections. As a result of her prior candidacies, she had, in 1989, begun publishing a newsletter which was described in the request as "intended to provide a

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non-partisan forum" for persons whom she had met "during the 1988 campaign for Congress, to speak out on community and governmental problems and issues of general public interest." Her request to the Commission asked whether she could continue to publish this newsletter during her 1990 campaign.

I dissented to the final draft of that opinion because I found particularly troubling language in the draft regarding the discussion of public policy issues wherein an "inference of campaign purpose could be drawn" that would result in the newsletter being considered as campaign related. I believe we too broadly infringed on free speech rights by implying that the underlying intent and purpose of anything said or printed by or about a candidate - at differing and uncertain time frames before an election - became solely election related. I do not accept the position that there could be no other reason or purpose except electioneering for undertaking such activities.

This broad sweeping inclusion of any discussion on issues of the day by a candidate could easily become, after

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the fact, a "campaign related" topic and put candidates, campaign committees and, in Mrs. Mueller's case, her newsletter in jeopardy of violating the law.

For that reason, I continue to take issue with the aforementioned analysis of 1990-5, and its adaptation in this Advisory Opinion.

Joan D. Aikens

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Commissioner

Date: March 16, 1992