



FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 14, 1992

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1992-6

Garrett Simmons
New York Speakers Bureau, Inc.
10 Jones Street
New York, NY 10014

Dear Mr. Simmons:

This responds to your three letters dated February 4, January 27, and January 22, 1992, on behalf of David Duke and requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to Mr. Duke's acceptance of an honoraria and travel expenses for a speech at Vanderbilt University.

Your letters explain that Mr. Duke has accepted an invitation from Vanderbilt University to deliver a speech in February 1992 at the University in Nashville, Tennessee. The specific date for the speech will be set by mutual agreement between your office and the University. Mr. Duke's agreement to a date is "subject to availability of personal and non-campaign related time when he is in residence" at Metairie. The University's choice of a date is subject to student interest and the availability of a venue. Vanderbilt University's IMPACT Symposium, the host for Mr. Duke's proposed lecture, is a student group that "hosts a series of lectures by national leaders on a variety of issues each February."

Mr. Duke's lecture topic is the "history of Affirmative Action in America and its possible repercussions if similar policies were implemented in developing nations." The topic was chosen by your office "based on past interest and requests for Mr. Duke's knowledge on the subject by colleges and universities, as well as new and overwhelming interest by print, television, and radio media worldwide." His speech, you state, will contain no mention of his presidential candidacy, no mention of any other candidates, and "no requests for campaign contributions or support."^{1/}

You state that Mr. Duke's primary source of income for many years has been derived from the lecture circuit. Vanderbilt has offered to pay him an honorarium and travel expenses for the IMPACT lecture, and Mr. Duke proposes to receive these amounts "as personal income." You explain that said "fees would not be used for any purpose whatsoever relative to his [presidential] campaign."

Responding to questions posed in telephone conversations between you and Commission counsel, your letters of January 27 and February 4 provide further details about Mr. Duke's Vanderbilt appearance. The audiences for previous IMPACT lectures have generally been comprised of 70% to 80% students and faculty, with the balance consisting of the general public. The lectures are announced via campus radio, campus newspapers, and campus posters; the University routinely provides press releases to general media for larger campus events. Brochures describing IMPACT and its featured speakers are also available at various campus locations. Vanderbilt's past practice has been to pay honoraria and travel expenses to invited speakers including Nelson Mandela and other "politically oriented" speakers. The source of funding for such IMPACT payments will be student activity monies from the University, as well as proceeds from various fund-raising projects and donations from alumni and interested parents of students. The Commission understands and assumes for purposes of this opinion that the foregoing practices and policies of the IMPACT program will be followed with respect to Mr. Duke's appearance.

Your letters further clarify that Mr. Duke and his campaign representatives will not utilize this lecture event for the purpose of influencing his presidential campaign. Specifically, you state that no David Duke volunteers or campaign personnel will be present at the lecture and that it will not include any display of Duke campaign banners or any other campaign decorations, nor the distribution of Duke campaign flyers, buttons or similar campaign promotional items. Mr. Duke and his campaign personnel will not do any advance advertising or promotion in conjunction with the lecture and will not hold or participate in any press conference either before or after the event. In addition, Mr. Duke will not participate in any campaign rallies, lunches, or other campaign events either before or after the speech. You further state that the Duke campaign will not make any campaign-related use of video-tapes, audio-tapes or still photos of the proposed lecture. Finally, you explain that the travel expenses will cover Mr. Duke's travel directly from his home in Metairie, Louisiana to Nashville and return, and his travel will not be made in conjunction with any campaign-related appearance.

Given the above facts and circumstances, your request presents the question whether the Act and Commission regulations permit Mr. Duke to accept an honorarium and travel expenses from Vanderbilt University in connection with his lecture at a University symposium. The answer to this question depends upon whether the described payments would constitute a contribution to Mr. Duke's current presidential campaign for purposes of the Act and Commission regulations.

The Act provides 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 "person" includes an individual, an association, a corporation, or any other organization. 2 U.S.C. 431(11). Furthermore, the Act prohibits a corporation from making any contribution or expenditure in connection with a Federal election and provides in this context

that "contribution or expenditure" includes "any direct or indirect payment, distribution . . . or gift of money, or any services, or anything of value . . . to any candidate, [or] campaign committee" in connection with any Federal election. 2 U.S.C. 441b(a) and 441b(b)(2).

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 1990-5, 1988-27, 1986-37, 1986-26, 1984-13 and 1983-12.

Advisory Opinions 1988-27 and 1990-5 are the most relevant to the situation presented in your request. In the 1988 opinion the Commission considered a corporation's payment of an honorarium to a Federal candidate who was expected to speak at a fundraising event held on behalf of the corporation's political committee. The candidate was also an incumbent member of Congress and was selected to speak at the event on the basis of familiarity with the corporation's business activity. In concluding that the corporation's honorarium to the candidate would not be a contribution to the campaign, the Commission relied on several facts: (a) the honorarium would be paid directly to the speaker and not to the campaign; (b) the corporation would not solicit or direct or control contributions to the campaign from those attending the event, either at the event or in the invitations for same; (c) any contribution from the corporation's political committee to the candidate's campaign would not be in consideration for the candidate speaker's appearance. The Commission also assumed, from the facts presented, that the candidate's speech would be made in the performance of his/her duties as an officeholder, including discussion of legislative issues, and would not be related or in reference to the speaker's campaign for Federal office. Advisory Opinion 1988-27.

The situation presented by Mr. Duke's lecture at Vanderbilt University is similar in several material respects to that presented in Advisory Opinion 1988-27. The honorarium and related travel expenses will be paid directly to Mr. Duke who will receive the payment as personal income. The symposium lecture by Mr. Duke will not be staged in a manner that would afford Mr. Duke an opportunity to solicit or collect contributions from attendees on behalf of the Duke presidential campaign. Vanderbilt University and/or IMPACT, and not Mr. Duke, will have control over the event and who is admitted. Mr. Duke himself will not mention his own candidacy or that of anyone else in his speech; nor will he or his campaign staff solicit campaign contributions or campaign support. In addition, neither Mr. Duke nor his campaign staff will coordinate or encourage the display of campaign banners or decorations or encourage distribution of Duke campaign materials. No collateral campaign events (e.g. rallies, press conferences, luncheons, etc.) or publicity will be conducted by or involve Mr. Duke's participation or that of his campaign personnel. Moreover, instead of being based entirely on his status as a presidential candidate, Mr. Duke's appearance and Vanderbilt's invitation may, in part,

reflect his career as a recent state legislator and a speaker who, in prior speeches to college and university audiences, has expounded his ideas regarding the impact of current statutes and future legislation.

Nevertheless, candidate activities involving the discussion of campaign issues during an election by the candidate necessitates further scrutiny to determine campaign-relatedness. Here the candidate controls the words he speaks. In Advisory Opinion 1990-5, the Commission concluded that a newsletter discussing public policy issues which is originated, implemented, and funded by a candidate would be campaign-related, even with the absence of explicit references to the candidacy or campaign for Congress. The Commission reviewed the circumstances surrounding the newsletter, including the candidate's control, the fact that the newsletter was inspired by her previous experiences as a candidate, the targeted audience, the fact that some persons were involved in both the campaign and the newsletter, and the public policy content of the newsletter, and stated that "therefore, any reference to or discussion of your candidacy or campaign in the newsletter, or presentation of policy issues or opinions closely associated with you or your campaign, would be inevitably perceived by readers as promoting your candidacy, and viewed by the Commission as election-related and subject to the Act."

Based on its review of all the foregoing facts and circumstances presented in this request, and in reliance on the representations made, the Commission concludes that the described event and Vanderbilt's payment of an honorarium and related travel expenses would not constitute a contribution or expenditure for purposes of the Act and Commission regulations. However, any reference by Mr. Duke to his campaign, or to the campaign or qualifications of another presidential candidate, either during the speech or during any question and answer period (held just before or after the speech) will change the character of the appearance to one that is for the purpose of influencing a Federal election. The Commission notes the significance of a question and answer period in these circumstances given that Mr. Duke is putting himself in this situation just prior to the Tennessee presidential primary, and such questions, or Mr. Duke's answers to them, are a very foreseeable development.

The Commission expresses no opinion as to any tax ramifications in these circumstances, since those issues are outside its jurisdiction.

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)

Joan D. Aikens
Chairman for the Federal Election Commission

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

ENDNOTES

1/Mr. Duke filed an FEC Form 2 on December 9, 1991, stating that he is a candidate for the office of President of the United States in the 1992 election cycle. He is also designated the David Duke for President committee as his principal campaign committee. The Tennessee presidential primary election is scheduled for March 10, 1992, Tennessee election officials state that Mr. Duke's name will appear on the ballot.