



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20543

CONCURRING OPINION OF
COMMISSIONER LEE ANN ELLIOTT
TO ADVISORY OPINION 1993-18

Although I agree with the thrust of Advisory Opinion 1993-18, I am writing separately to note that our corporate communication regulations at 11 C.F.R. § 114.4 can inspire superfluous analysis and awkward results.

For example, Southwestern Bell asked whether it could engage in a non-partisan candidate-information drive to all its employees. The Commission, however, spent two pages answering this question in terms of a Partisan Communication to Bell's restricted class. Not only is this not what the requester asked or intends to do, but this answer is completely subsumed by the opinion's later analysis of the requester's activity as a Non-partisan Communication To Other Employees and Their Families.

Second, the opinion states Bell's candidate information drive cannot be communicated to its non-stockholding retirees since this information does "not fall within the scope of voter guides as contemplated by the Commission's regulations." I have a hard time believing Bell's information drive is really different from a voter guide under 11 C.F.R. § 114.4(b)(5)(A)-(F), or that our inability to "contemplate" this activity makes it illegal.

Commission regulations already allow corporations to distribute non-partisan voter guides to the general public. Id. In my opinion, Bell's plan to ask candidates how Bell employees and retirees might volunteer for them is no different than lawfully asking candidates their position on issues, biographical information, community involvement and the like. See 11 C.F.R. §114.4(b)(5),(E). In fact, if Bell had phrased its advisory opinion request in terms of a "non-partisan voter guide," perhaps the Commission would have reached a more commodious result.

1. Commission regulations provide that a corporation may make non-partisan communications to its restricted class as well as its other employees and their families. 11 C.F.R. § 114.4(a)(1)(i).

I also disagree with the General Counsel's assertion that asking a campaign for its address, phone number or volunteer needs takes the activity outside the voter guide provisions. Seeking and publishing this otherwise public information does not, in my opinion, create a corporate contribution in violation of 2 U.S.C. § 441b or "too much" corporate contact that may prohibit independent expenditures or partisan appearances in the future. See 57 Fed. Reg. 33,548 (proposed July 29, 1992).

Lastly, I do not think the Commission's failure to "contemplate" activity such as Bell's in our regulations means Bell's plan must be prohibited by § 441b. I do not believe our regulations can exhaustively list all possible exceptions to § 441b. It is up to the Commission to decide with an open mind whether someone's new idea is not prohibited by law. We should not retreat to the notion that "since we haven't thought of it, the activity may not be done." In fact, we should encourage new ideas that stimulate participation in the electoral process. As the First Circuit said in Faucher v. FEC, when the Commission is too restrictive in its application of §114.4(b)(5) we "overstep the regulatory boundaries imposed by the FECA as interpreted by the Supreme Court." 928 F.2d 468, 472 (1st Cir. 1991).

December 8, 1993


Lee Ann Elliott
Commissioner