



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

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June 16, 1994

MEMORANDUM TO: The Commission

THROUGH: John C. Surina  
Staff Director

FROM: Lawrence M. Noble  
General Counsel

N. Bradley Litchfield  
Associate General Counsel

Jonathan M. Levin  
Senior Attorney

SUBJECT: Draft AO 1994-15

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for June 23, 1994.

Attachment

**AGENDA ITEM**  
For Meeting of: JUN 23 1994

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ADVISORY OPINION 1994-15

**DRAFT**

The Honorable Leslie L. Byrne  
United States House of Representatives  
Washington, D.C. 20515

Dear Congresswoman Byrne:

This responds to your letter dated May 11, 1994, concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the hosting of a monthly public affairs series to be televised on local cable stations.

You are a member of Congress from the 11th District of Virginia and a candidate for re-election. You plan to host a monthly, half-hour public affairs cable series, entitled "Capital Conversation," to be aired on two cable TV stations that serve your district, Channel 10 in Fairfax County and Channel 3 in Prince William County. The program will be produced by the TV Unit of the National Association of Retired Federal Employees. You have provided the Commission with the program proposal submitted to Channel 10, where the program will be taped, describing the background and contents of the proposed series.

The key objective of the program is to inform viewers on the important issues of the day so that they may intelligently contribute to their resolution. The target audience is adult viewers interested in current affairs and high school students interested in political and social sciences. The program will use a panel format consisting of selected subject matter experts and you. Each monthly

3 segment will be devoted to a single issue, such as health  
4 care, the economy, transportation, crime, and education.<sup>1/</sup>  
5 The program will air at a regularly scheduled time determined  
6 by the two cable stations.

7 You state that your Communications Director will  
8 coordinate the participation of the subject matter experts  
9 and you, the collection of background materials for the  
10 topics, and the supply of video clips and visual aids to  
11 discuss the topic. She will also serve as your point of  
12 contact for program matters in your office. You will be  
13 responsible for asking informative questions, keeping the  
14 discussion under control and adhering to the predetermined  
15 time schedule.

16 More specifically, the program proposal describes the  
17 format of the show as opening with a montage of Washington  
18 accompanied by music, voice over, and titles introducing you  
19 and the guests. Then, you will present a two minute or less  
20 overview of the topic, and you will ask an introductory  
21 question. You will "allow the discussion to pursue a natural  
22 uninhibited course and will keep it on track by interjecting  
23 appropriate comments, questions, and by calling on guests to  
24

25  
26 <sup>1/</sup> In discussing the "history" behind the program, the  
27 program proposal notes that panel shows featuring current  
28 government officials discussing a single topic are  
29 comparatively rare. It states that the NARFE TV Unit has  
30 produced similar programs, NARFE Looks at Budget '90 (a  
review of the 1990 Federal budget) and NARFE Looks at the  
Report of the Pepper Commission (which studies the nation's  
health care system), and that both programs were favorably  
received.

3 expound alternate views." Thirty seconds prior to the end of  
4 the program, you will state that the time is up and will  
5 invite the audience to tune in next month to the next edition  
6 of the program.

7 You state that the Channel 10 program producer "will  
8 produce, direct, record, and maintain control over the  
9 program." The programs will "relate to issues and  
10 scrupulously avoid any political connection." Neither you,  
11 your campaign committee, nor the stations affiliated with the  
12 program will receive any financial benefit. There will be no  
13 solicitation of money or in-kind donations for political  
14 purposes. Your description of the visual elements of the  
15 program do not indicate any use of any campaign materials.<sup>2/</sup>

16 You seek an advisory opinion as to the appropriateness  
17 of the series and your participation in it.

18 The Act and Commission regulations define the terms  
19 "contribution" and "expenditure" to include gifts of anything  
20 of value and any purchase or payment made for the purpose of  
21 influencing the election of any person to Federal office. 2  
22 U.S.C. §431(8)(A)(i) and (9)(A)(i); 11 CFR 100.7(a)(1) and  
23 100.8(a)(1). See 2 U.S.C. §441b(b)(2); 11 CFR 114.1(a)(1).  
24 Any contribution or expenditure is required to be disclosed  
25 by the receiving and disbursing committee. 2 U.S.C. §434(b);  
26 11 CFR 104.3(a) and (b), 104.13. Contributions are subject  
27

28 <sup>2/</sup> For purposes of this opinion, the Commission also  
29 assumes that no one connected with your campaign committee  
30 will be involved in the production of the program. See  
Advisory Opinion 1992-5.

3 to the limitations of the Act at 2 U.S.C. §441a(a) and  
4 prohibitions at 2 U.S.C. §§441b, 441c, 441e, and 441f. If  
5 the activity in question is for the purpose of influencing  
6 your election, this will implicate the limits or  
7 permissibility of amounts expended by the NARFE TV Unit,  
8 Channel 10, or some other provider, and the committee's need  
9 to report the amounts expended as contributions and/or  
10 expenditures.

11 The Commission has frequently considered whether  
12 particular activities involving the participation of a  
13 Federal candidate, or communications referring to a Federal  
14 candidate, result in a contribution to or expenditure on  
15 behalf of such a candidate under the Act. The Commission has  
16 determined that financing such activities will result in a  
17 contribution to or expenditure on behalf of a candidate if  
18 the activities involve (i) the solicitation, making or  
19 acceptance of contributions to the candidate's campaign, or  
20 (ii) communications expressly advocating the nomination,  
21 election or defeat of any candidate. See Advisory Opinions  
22 1992-37, 1992-5, and opinions cited therein. The Commission  
23 has also indicated that the absence of solicitations for  
24 contributions or express advocacy regarding candidates will  
25 not preclude a determination that an activity is  
26 "campaign-related." Advisory Opinions 1992-37, 1992-6,  
27 1990-5, 1988-27, 1986-37, 1986-26, 1984-13 and 1983-12.

28 More specifically, the Commission has concluded that  
29 events in which Federal officeholders participate in the  
30

3 performance of their duties as officeholders are not  
4 campaign-related simply because the officeholders may be  
5 candidates for election or re-election to Federal office, and  
6 that payments associated with the expenses of such events are  
7 not contributions to that officeholder's campaign, absent any  
8 campaign-related activity at that event. Advisory Opinion  
9 1988-27 (involving a speech at a PAC fundraiser by a  
10 Congressman in return for an honorarium within four months of  
11 an election, where the PAC, in an unrelated action, might  
12 also contribute to his campaign). See also Advisory Opinions  
13 1981-37 (corporate and union purchases of tickets for a  
14 series of public affairs forums to be moderated by a  
15 Congressman) and 1980-89 (donation of refreshments to a  
16 reception held by a Congressman for his advisory committee on  
17 the arts).

18 Advisory Opinion 1992-5 is of particular relevance to  
19 your situation. That opinion involved a Member of Congress  
20 hosting two monthly series of public affairs forums on cable  
21 channels in his district during an election year. The  
22 programs were limited to discussions of issues before the  
23 Congress or issues relevant to the district with no messages  
24 soliciting contributions and without references to the  
25 Congressman's campaign or election to Federal office. The  
26 cable stations directed, produced, and had complete  
27 financial control over the programs, as well as the  
28 television rights. The Commission concluded that no  
29 contribution or expenditure would result from the production  
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and broadcasting of the programs.

Based on a review of the information submitted by you, the Commission concludes that production and broadcasting of the proposed series will not result in a contribution or expenditure and are, therefore, permissible under the Act. This series does not appear to be controlled by your campaign, and it will not include campaign or election-related references. It will entail discussions on public issues moderated by a Federal officeholder acting in her capacity as an officeholder, with the special purpose of focusing on one issue per segment in depth. See Advisory Opinion 1992-5. The Commission also assumes that the scheduling and duration of the series, or the selection of individual topics, will not be made with reference to the timing of your nomination or election to office.

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.

3 This response constitutes an advisory opinion concerning  
4 application of the Act, or regulations prescribed by the  
5 Commission, to the specific transaction or activity set forth  
6 in your request. See 2 U.S.C. §437f.

7 For the Commission,

8 Trevor Potter  
9 Chairman

10 Enclosure (AOs 1992-37, 1992-6, 1992-5, 1990-5, 1988-27,  
11 1986-37, 1986-26, 1984-13, 1981-37, and 1980-89)  
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