



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20543

**CONCURRING OPINION OF CHAIRMAN TREVOR POTTER
IN ADVISORY OPINION 1994-15**

The Commission in this Advisory Opinion allows a lobbying organization with a PAC to "produce"¹ a television program featuring a Member of Congress, and to provide that program for cablecasting and broadcasting within the Member's district. The Member, who is also currently a candidate for re-election in that district, will host the program, asking "informative questions, keeping the discussion under control." The Communications Director of the Member's Congressional staff will "coordinate the participation of . . . [the] subject matter experts, [the] collection of background material on topics to be discussed," and the "supply of video clips and visual aids required to illustrate the topic." The Communications Director will serve as the "point of contact for program matters" in the Member's office.

The view of the Commission's Office of General Counsel appears to be that this arrangement is permissible so long as the video programs do not contain language expressly advocating the election of the candidate or the defeat of her opponent; do not solicit financial contributions for her campaign committee; and are not under the control of the campaign or governed by campaign considerations. The effect of this approach, of course, is that it may provide yet another avenue for Congressional incumbents and issue groups to use taxpayer and unreported private funds to advance their campaigns beyond the reach of the contribution limitations or disclosure requirements of the federal election laws.

Pursuant to this Opinion, an organization seeking to assist the re-election campaign of a Member of Congress may decide to produce a program in coordination with the Member and her Congressional staff. Such a program could be for the purpose of placing the Member before her constituents in a favorable

1. The Advisory Opinion request variously describes the producer of the proposed video program as "Anthony J. Daniels" (p.1 of the Proposal), "The NARFE TV Unit" (p.2 of the Proposal), and the "Channel 10 program producer" (p.3 of the Proposal). The Advisory Opinion itself concludes that the "program will be produced by the TV Unit of the National Association of Retired Federal Employees."

setting where she can express her views on issues of interest to the district's constituents/voters. Indeed, for all we know that scenario may well be an accurate description of the arrangement presented in this advisory opinion request.

For these reasons, any further evidence of a connection between this proposed privately-produced program and the candidate's campaign is cause for re-evaluation of the Commission's conclusion in this Opinion. The Member of Congress in this instance is a candidate for re-election and thus, under our regulations, an agent of her own campaign committee. In my view, any other campaign involvement with this program would materially alter facts presented to the Commission and, therefore, place the program beyond the protection of this Advisory Opinion. See Footnote 2 in Advisory Opinion 1994-15.



Trevor Potter
Chairman

Dated: July 13, 1994