



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 24, 1994

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1994-15

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 segment will be devoted to a single issue, such as health care, the economy, transportation, crime, and education.^{1/} The program will air at a regularly scheduled time determined by the two cable stations.

You state that your Communications Director will coordinate the participation of the subject matter experts and you, the collection of background materials for the topics, and the supply of video clips and visual aids to discuss the topic. She will also serve as your point of contact for

program matters in your office. You will be responsible for asking informative questions, keeping the discussion under control and adhering to the predetermined time schedule.

More specifically, the program proposal describes the format of the show as opening with a montage of Washington accompanied by music, voice over, and titles introducing you and the guests. Then, you will present a two minute or less overview of the topic, and you will ask an introductory question. You will "allow the discussion to pursue a natural uninhibited course and will keep it on track by interjecting appropriate comments, questions, and by calling on guests to expound alternate views." Thirty seconds prior to the end of the program, you will state that the time is up and will invite the audience to tune in next month to the next edition of the program.

You state that the Channel 10 program producer "will produce, direct, record, and maintain control over the program." The programs will "relate to issues and scrupulously avoid any political connection." Neither you, your campaign committee, nor the stations affiliated with the program will receive any financial benefit. There will be no solicitation of money or in-kind donations for political purposes. Your description of the visual elements of the program do not indicate any use of any campaign materials.²⁷

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

The Act and Commission regulations define the terms "contribution" and "expenditure" to include gifts of anything of value and any purchase or payment made for the purpose of influencing the election of any person to Federal office. 2 U.S.C. 431(8)(A)(i) and (9)(A)(i); 11 CFR 100.7(a)(1) and 100.8(a)(1). See 2 U.S.C. 441b(b)(2); 11 CFR 114.1(a)(1). Any contribution or expenditure is required to be disclosed by the receiving and disbursing committee. 2 U.S.C. 434(b); 11 CFR 104.3(a) and (b), 104.13. Contributions are subject to the limitations of the Act at 2 U.S.C. 441a(a) and prohibitions at 2 U.S.C. 441b, 441c, 441e, and 441f. If the activity in question is for the purpose of influencing your election, this will implicate the limits or permissibility of amounts expended by the NARFE TV Unit, Channel 10, or some other provider, and the committee's need to report the amounts expended as contributions and/or expenditures.

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. See Advisory Opinions 1992-37, 1992-5, and opinions cited therein. 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 1992-37, 1992-6, 1990-5, 1988-27, 1986-37, 1986-26, 1984-13 and 1983-12.

More specifically, the Commission has concluded that events in which Federal officeholders participate in the performance of their duties as officeholders are not campaign-related simply

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

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

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

For the Commission,

(signed)

Danny L. McDonald
Vice Chairman

Enclosure (AOs 1992-37, 1992-6, 1992-5, 1990-5, 1988-27, 1986-37, 1986-26, 1984-13, 1983-12, 1981-37, and 1980-89)

Endnotes

1/ In discussing the "history" behind the program, the program proposal notes that panel shows featuring current government officials discussing a single topic are comparatively rare. It states that the NARFE TV Unit has 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.

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