



FEDERAL ELECTION COMMISSION
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SECRETARIAT

SEP 7 3 17 PM '95

September 7, 1995

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Michael G. Marinelli *m gm*
Staff Attorney

SUBJECT: Draft AO 1995-30

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for September 14, 1995.

Attachment

AGENDA ITEM
For Meeting of: 9-14-95

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ADVISORY OPINION 1995-30

Craig Snyder, Deputy Chairman
Arlen Specter '96
Suite 517
444 North Capitol Street
Washington, D.C. 20001

SEP 7 3 17 PM '95
DRAFT

Dear Mr. Snyder:

This refers to your letters dated August 16 and 14, 1995, on behalf of Arlen Specter '96 requesting an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to the allocation of satellite broadcast expenses.

Arlen Specter '96 (the "campaign") is the presidential campaign committee of Senator Arlen Specter. You state that the campaign intends to rent satellite time for media availability sessions. The campaign proposes to enter into an agreement with a commercial vendor to use its satellite broadcast facilities for a designated period of time (i.e. 30 minutes).^{1/} The campaign would then issue a press release to television news organizations in a given State saying that the candidate would be available to answer their questions at the designated time. You explain that a similar press release will also be sent out nationwide, offering the news media the opportunity to monitor, via satellite, the

^{1/} You state that the typical fee for satellite time is between \$600 and \$700 per half hour. This fee would include both the satellite uplink and the studio time. The cost is incurred in Washington D.C., where the candidate would use a rented television studio. The cost is thus unrelated to where the television news media personnel are located.

3 interviews that are performed by the media for the selected
4 State. During the media availability session, Senator
5 Specter would be at a location in Washington, D.C. He would
6 be linked, via telephone and satellite, to the television
7 media representatives who have chosen to participate in the
8 interview session from their local areas in various States,
9 e.g. Iowa and New Hampshire. You state that the candidate
10 would answer the questions as in an ordinary face-to-face
11 press conference, with no control over their content.^{2/}

12 You explain that media representatives located in one
13 State, or in several States, could be linked to the candidate
14 via satellite. Alternatively, your proposal could entail
15 media representatives from several States gathering in one
16 location for a satellite line to interview Senator Specter.^{3/}

17 You state your belief that the use of such satellite
18 time is comparable to a press conference actually held in the
19 State because in both cases the television news
20 representatives have the opportunity to ask questions with no

21 ^{2/} You explain that the candidate would not typically make
22 any prepared statements during a satellite interview. Other
23 than some brief welcoming/establishing remarks to
24 introduce the topic, the typical 10-minute interview is
25 devoted to questions from the participating journalists.

26 ^{3/} In an August 17 phone conversation with Commission staff,
27 you explained the flexibility of the proposal and the
28 possibility that several States could be linked at once.

29 Your request materials also state that, at present, the
30 Specter campaign has used satellite broadcast interviews in
Iowa and plans a series of such interviews shortly in New
Hampshire. The campaign expects, you state, to incur similar
broadcast expenses for future interviews involving television
news media in any number of States, including possible
regional broadcasts.

3 restrictions as to content. You also note that the news
4 media throughout the nation have the opportunity to monitor
5 the interviews and use the videotape, just as when a press
6 conference occurs in a given State. Nonetheless, you wish
7 to know whether these expenses must be allocated to the
8 expenditure limits of the particular States that would be
9 directly linked by satellite for the interviews.

10 The Act provides that a presidential candidate who
11 becomes eligible for matching payments to finance a campaign
12 for the presidential nomination of a political party is
13 subject to expenditure limits. 2 U.S.C. §441a(b) and 26
14 U.S.C. §9035. These limits include both an overall or
15 national limit, as well as sublimits for each state based on
16 the State's voting age population. 2 U.S.C. §441a(b)(1)(A).

17 Commission regulations at 11 CFR 106.2(b)(2) delineate
18 the specific categories of expenses which must be allocated
19 to one (or more) State limits, rather than only to the
20 national limit. Media expenditures, both print and broadcast
21 advertisements, are included. See 11 CFR 106.2(b)(2)(i).
22 Also included, as State limit categories, are expenditures
23 for mass mailings and campaign material directed at a
24 particular State, State office overhead expenses,
25 expenditures for special telephone programs and certain
26 public opinion poll expenditures. See 11 CFR
27 106.2(b)(2)(ii), (iii), (iv) and (v).

28 The Commission notes that the expenses described in your
29 request do not fit explicitly into any of these specific
30

4 categories stated in the regulations.^{4/} The Commission notes
5 that your proposal does not ensure that any news media
6 organization will avail itself of the opportunity to
7 interview the candidate. Further, the campaign cannot
8 control what use, if any, is made of the interview materials.
9 Therefore, these expenses would not be viewed as campaign
10 advertisements costs. These expenses also do not fit the
11 definition of State office overhead expenses as defined in 11
12 CFR 102.6(b)(2)(iii)(D).^{5/}

13 In view of the above discussion, the Commission
14 concludes that Arlen Specter '96 is not required to allocate
15 the satellite broadcast expenses, described in the request,
16 to the expenditure limit of any particular State. Arlen
17 Specter '96 shall, however, allocate these expenses to its
18 national expenditure limit.

19 4/ The current form of section 106.2(b)(2) resulted from 1991
20 revisions which provided a new list of categories of
21 allocable expenditures in order to simplify the State
22 limit allocation system. See 56 Fed. Reg. 35899 (July 29,
23 1991). In describing the new system the Commission noted:

24 Under the new state allocation rules, the
25 detailed list of allocable expenditures
26 and exemptions set out in previous 11
27 106.2 is replaced with a more limited set
28 of allocable expenditures that are
29 directly related to the campaigns in
30 particular states. All other
expenditures are exempted from state
allocation, but not from the
overall spending limits.

Id.

5/ For purposes of 11 CFR 106.2(b)(2)(iii), overhead
expenditures "include, but are not limited to, rent,
utilities, equipment, furniture, supplies, and telephone
service base charges." See 11 CFR 106.2(b)(2)(iii)(D).

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

7 Sincerely,

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9 Danny L. McDonald
10 Chairman
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