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September 19, 1995

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina *yes by ch*
Staff Director

FROM: Lawrence M. Noble *[Signature]*
General Counsel

N. Bradley Litchfield *[Signature]*
Associate General Counsel

Michael Marinelli *mm*
Attorney

SUBJECT: Final Draft of Advisory Opinion 1995-30

Attached is the final draft of the subject opinion for circulation and tally vote with a 24 hour, no objection deadline.

The changes made in the draft reflect the motion adopted by Commission vote on September 14, 1995, to approve Advisory Opinion 1995-30, as submitted in Agenda Document #95-98 as modified by discussion at the table. The changes relate to modifications stressing the limited audience targeted by the requester in his proposal. The new or modified language is identified by marginal notations.

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1995-30

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

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 interviews that are performed by the media for the selected State. During the media availability session, Senator Specter would be at a location in Washington, D.C. He would

^{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.

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be linked, via telephone and satellite, to the television media representatives who have chosen to participate in the interview session from their local areas in various States, e.g. Iowa and New Hampshire. You state that the candidate would answer the questions as in an ordinary face-to-face press conference, with no control over their content.^{2/}

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

You state your belief that the use of such satellite time is comparable to a press conference actually held in the State because in both cases the television news representatives have the opportunity to ask questions with no restrictions as to content. You also note that the news media throughout the nation have the opportunity to monitor the interviews and use the videotape, just as when a press conference occurs in a given State. Nonetheless, you wish to know whether these expenses must be allocated to the expenditure limits of the particular States that would be directly linked by satellite for the interviews.

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

Commission regulations at 11 CFR 106.2(b)(2) delineate the specific categories of expenses which must be allocated

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

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

Your request materials also state that, at present, the 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.

to one (or more) State limits, rather than only to the national limit. Media expenditures, both print and broadcast advertisements, are included. See 11 CFR 106.2(b)(2)(i). Also included, as State limit categories, are expenditures for mass mailings and campaign material directed at a particular State, State office overhead expenses, expenditures for special telephone programs and certain public opinion poll expenditures. See 11 CFR 106.2(b)(2)(ii), (iii), (iv) and (v).

The Commission notes that the expenses described in your request do not fit explicitly into any of these specific categories stated in the regulations. The Commission notes the campaign expects that the audience targeted and directly reached by the satellite linked interviews will be limited to media representatives and will not include the general public. Furthermore, your proposal does not ensure that any news media organization will avail itself of the opportunity to interview the candidate. Additionally, the campaign cannot control what use, if any, is made of the interview materials. Because of these limitations, including the restricted audience, the expenses would not be viewed as campaign advertisements costs. These expenses also do not fit the definition of State office overhead expenses as defined in 11 CFR 102.6(b)(2)(iii)(D).

New

Revised

In view of the above discussion, the Commission concludes that Arlen Specter '96 is not required to allocate the satellite broadcast expenses, described in the request,

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

Under the new state allocation rules, the detailed list of allocable expenditures and exemptions set out in previous 11 CFR 106.2 is replaced with a more limited set of allocable expenditures that are directly related to the campaigns in 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).

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to the expenditure limit of any particular State. Arlen Specter '96 shall, however, allocate these expenses to its national expenditure limit.

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.

Sincerely,

Danny L. McDonald
Chairman

