



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 4, 1996

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1996-41

James R. Bayes
Wiley, Rein and Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Dear Mr. Bayes:

This responds to your letters of September 13 and 19, and October 2, 1996, requesting an advisory opinion on behalf of A.H. Belo Corporation ("Belo"), a corporation which owns and operates seven television stations in six states.¹ Your request concerns the application of the Federal Election Campaign Act of 1971, as amended ("FECA" or "the Act"), and Commission regulations to Belo's proposed production and broadcast of television programs featuring candidates for federal and state office.

You state that Belo plans to produce a series of television programs in conjunction with local PBS affiliates featuring the views of candidates for the United States Senate, House of Representatives and Governor in each area served by a Belo station. The House races included will be those from districts representing the primary viewing audience in the geographic area reached by the stations' broadcast signals. When two or more candidates are seeking the same seat, Belo will select candidates to participate based on "pre-established objective criteria for public support and credibility." Belo will invite participation by more than two candidates seeking the same seat if they meet these criteria.

For each race included in a program, the Belo station will invite the candidates to its studios. A Belo news division interviewer will introduce each candidate and then ask each candidate to respond to the same question.² Candidates will have an uninterrupted five minutes to reply. Each candidate segment will be taped separately; these segments will then be combined by the station's news division into a program to be broadcast by the local Belo station and the PBS

outlet in that market. Candidates will not have an opportunity to reply to statements made by their opponents.

You indicate that the stations intend to run the candidates' answers in their entirety, subject only to the five minute limit for each response. The order of appearance for candidates seeking the same office will be determined by lot. Each program is expected to be one hour in length although, in the larger markets, the number of candidates involved may require that two episodes be produced. In such cases, candidates competing for the same office would always appear in the same broadcast.

Belo plans to schedule the broadcast of these programs in time periods normally devoted to news and public affairs programming, and will run the program with no commercial interruptions. It also intends to make the taped program available to local cable operators and radio stations, in addition to the local PBS outlet.

You ask whether, under these circumstances, the proposed production and broadcast of these television programs is consistent with the news media exemption of the Act. 2 U.S.C. 431(9)(B)(i).

Under section 441b, a corporation is prohibited from making contributions or expenditures in connection with a Federal election. 2 U.S.C. 441b. However, the FECA exempts from the definition of "expenditure"

any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate.

2 U.S.C. 431(9)(B)(i). See also, 11 CFR 100.7(b)(2) and 100.8(b)(2).

To qualify for this exemption, the Commission must first find that Belo is a press entity as described by the Act and regulations. See Advisory Opinion 1996-16 and opinions and cases cited therein. Furthermore, in previously applying the press exemption to candidate appearances, the Commission has cited two criteria, based on the statutory exemption, that would be relevant to determining the scope of the press exemption. These are (1) whether the press entity is owned by a political party or candidate and (2) whether the press entity is acting as a press entity in performing the media activity. Advisory Opinion 1982-44 (citing *Reader's Digest Association v. Federal Election Commission*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981)).

Belo's seven network-affiliated stations appear to be broadcasters with an active involvement in local news coverage. Your request notes that Belo is "not owned or controlled by a political party, political committee, or candidate." Moreover, in producing these programs, Belo proposes to create and cover a news event in which candidates for Federal office appear and answer a pre-determined question posed by a news division interviewer under circumstances controlled by the broadcaster. For example, each candidate will have a limited amount of time in which to answer the question. These answers will be aired without editing or interruption in a program containing the responses of other candidates running for the same seat. In addition, the programs will run

during time periods normally devoted to public affairs and news programming. Based on the foregoing, the Commission concludes that Belo, through its owned and operated stations, is a press entity that will be acting as a press entity in the above proposal.³ The production and broadcast of the programs you have proposed would therefore be permissible under the Act.

This conclusion is not altered by your statement that Belo intends to broadcast the responses of all candidates who participate in its program, even if one or more invited candidates decline to appear.⁴ Since Belo's program comes within the press exemption, it is not subject to the Commission's candidate debate regulations. Under those regulations, a staging organization can only avoid a prohibited corporate contribution if two or more candidates seeking the same office appear in a face-to-face confrontation. See 11 CFR 110.13 and Advisory Opinion 1986- 37.

Your request also notes Belo's intention to make the taped program available to local cable operators and radio stations. While the Commission recently revised its regulations to make clear that cable operators are considered to be broadcasters within the meaning of the press exemption, your request does not provide any information on which the Commission could determine whether these media organizations are press entities acting in their capacity as press entities when carrying this program. See, 61 *Fed. Reg.* 18049 (April 24, 1996).

This response constitutes an advisory opinion concerning the 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,

(signed)

Lee Ann Elliott
Chairman

Enclosures (AOs 1996-16, 1986-37 and 1982-44)

1 These stations are: WFAA-TV (ABC) in Dallas, Texas; KHOU-TV (CBS) in Houston, Texas; KIRO-TV (UPN) in Seattle, Washington; KXTV (ABC) in Sacramento, California; WWL-TV (CBS) in New Orleans, Louisiana; WVEC-TV (ABC) in Hampton/Norfolk, Virginia; and KOTV (CBS) in Tulsa, Oklahoma. You also state that Belo publishes *The Dallas Morning News* and several other smaller daily newspapers.

2 The question will be developed by Belo, in consultation with the PBS stations. There will be no input by the candidates or their agents.

3 You note that the Federal Communications Commission recently "concluded...that a similar proposal met its standard for `on the spot coverage of a bona fide news event.' See Fox Broadcasting Co., et al., FCC 96-355 (Aug. 19, 1996)." That ruling concerned proposed programming providing the major presidential candidates with uninterrupted broadcast time. One of the proposals, submitted by Fox, is similar to your request in that it involved posing the same set of questions to each of the presidential candidates who met certain criteria and broadcasting their time-limited responses back to back. The FCC determined that the proposals at issue,

including that offered by Fox, constituted "on-the-spot coverage of a bona fide news event", but limited the application of its decision to proposals involving presidential candidates. The FCC declined to state whether these proposals, if applied to programs involving Congressional or Senatorial candidates, would meet this test. In your letter of October 2, you enclose a recent FCC staff ruling issued in response to your request, finding that your proposal is consistent with the FCC's decision in Fox, supra. See, In re Request of A.H. Belo Corporation, released October 1, 1996. However, since the Commission has concluded that your proposal would come within the Act's press exemption, it is unnecessary to consider the implications of a possible FCC determination concerning this activity.

4 You state that, if any candidates decline to appear, the station will include in its broadcast "the responses of any and all participating candidates, noting if necessary that others were offered an opportunity to participate in the program but were unable to do so."