



FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 10, 1986

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1986-37

J. Curtis Herge, Esquire
Herge, Sparks, Christopher & Biondi
8201 Greensboro Drive, Suite 200
McLean, VA 22102

Dear Mr. Herge:

This responds to your letter of September 23, 1986, on behalf of the National Conservative Foundation, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the financing and sponsorship of a convention that will include a nonpartisan candidate debate.¹

You state that the National Conservative Foundation ("the Foundation") was organized under the Virginia Nonstock Corporation Act on June 13, 1978; John T. Dolan was the incorporator. The Foundation is an organization exempt from Federal taxation under 26 U.S.C. 501(c)(3). Section 501(c)(3) grants tax-exempt status to corporations and foundations organized and operated exclusively for religious, charitable, or educational purposes (among others) and "which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office." 26 U.S.C. 501(c)(3). This statutory prohibition is also contained in the Foundation's articles of incorporation. These articles also state that the Foundation's corporate purposes include the sponsorship of public discussion groups, panels, lectures, and forums in which members of the public, governmental leaders, and others participate and exchange views on public issues and the political structure of the United States.

¹ You have incorporated by reference documents you submitted with respect to Advisory Opinion 1986-26. These documents include the Foundation's articles of incorporation, its by-laws, and the letter from the Internal Revenue Service granting the Foundation tax-exempt status under 26 U.S.C. 501(c)(3).

You further note that the Foundation "has not established a political committee, or separate segregated fund, and it does not support, endorse or oppose political candidates or political parties." The Foundation has no members, and its offices are located at 1001 Prince Street, Alexandria, Virginia. Its officers are John T. Dolan (chairman of the board and president), Maiselle Shortley (vice president), and L. Brent Bozell, III (secretary and treasurer). You note that Mr. Dolan is also chairman of the National Conservative Political Action Committee ("NCPAC"), which has registered with the Commission as a nonconnected political committee.

You state that the Foundation plans to organize and sponsor a nonpartisan forum, to be known as the National Conservative Convention ("the convention"). Members of the general public, governmental leaders, and others will be invited to participate in the convention for the purpose of identifying, discussing, and adopting positions on various foreign and domestic public policy issues. The convention will be held over a three-day period in mid-1987. During the convention, attendees will listen to and question both technical experts and governmental leaders, engage in an interchange of views, and have an opportunity to adopt a collective position on foreign and domestic public policy issues. The convention will include speeches, workshops, hearings, and seminars. You state that the convention is to be both an educational forum, in which the individual participants may learn and formulate their own conclusions about various public policy issues, and a forum in which they make their individual and collective views on such issues public. You add that the purposes of the convention are intended to have no direct relationship to, or bearing upon, the 1988 presidential nomination or election process, which will include the separate, independent development of party committee platforms by separate bodies of delegates.

As part of the convention agenda, the Foundation plans to include a series of separate addresses to the assembled attendees by those individuals who, at the time the convention is held, are candidates or possible candidates for President of the United States in the 1988 presidential election cycle. This series of separate addresses will be structured and presented as a nonpartisan candidate debate, and will be staged as follows:

(1) The Foundation will invite every individual affiliated with the two major political parties who is or may be a candidate for nomination for President. The criteria for determining which individuals are invited to participate in this debate are (i) whether the individual has registered a principal campaign committee with the Commission with respect to the 1988 presidential election or (ii) whether the individual has publicly announced the formation of an exploratory or testing-the-waters committee.²

(2) Each invitee will be allowed to speak to the assembled attendees at the convention for 20 minutes on a topic or topics of his or her selection.³ At the end of this address, there will be a 15-minute question and answer session with questions being asked by attendees from the

² You note in your request that former governor Pierre DuPont IV has registered a principal campaign committee with the Commission and that Vice President George Bush, former senator Howard Baker, and the Rev. Pat Robertson have publicly announced the formation of exploratory or testing-the-waters committees. Thus, there is a reasonable expectation that your proposed candidate debate will include at least two candidates under this criteria.

³ You state that each candidate will be asked to notify the Foundation in advance of the convention of the title of his or her address so that it may be included in the convention program.

convention floor. There will be a moderator who will not comment on the questions or otherwise make comments that imply approval or disapproval of any of these invitees.

(3) Each invitee will deliver his or her address from the podium on the dais on the convention floor. Specific portions of the convention agenda will be set aside for these addresses so that each invitee will be given a comparable time for his or her address, such as 10 a.m., 2 p.m., or 4 p.m. Candidates or potential candidates who participate in this debate will also not be scheduled as luncheon or dinner speakers or speakers at the public policy workshops, hearings, and seminars that make up the convention agenda. You also state that the setting for the debate will not promote or advance one candidate over another, and that each candidate will have an opportunity to make his or her presentation in a neutral, fair, and impartial manner.

(4) The Foundation will not pay any honorarium to any candidate or potential candidate who participates in the debate or pay such candidate or his or her accompanying staff for transportation, travel, and lodging expenses.

(5) The Foundation will not permit the convention attendees to engage in any public demonstration or display on the convention floor in support of or opposition to any candidate. The Foundation will also not permit any solicitation of funds or contributions for any candidate or candidate's committee. You further assure that the Foundation will not sponsor, co-sponsor, or have any monetary or other involvement with any activities involving any candidate or political committee before, during, or after the convention.

You ask these questions:

(1) Will the sponsorship and financing of a National Conservative Convention by the Foundation constitute contributions and expenditures under 2 U.S.C. 441b?

(2) Will the proposed appearances by presidential candidates constitute a nonpartisan candidate debate under 11 CFR 110.13 and 114.4(e)?

(3) May presidential candidates who participate in the debate be identified as candidates in their introductions and in the convention literature?

(4) May contributions to defray the cost of the convention be accepted from corporations, government contractors, foreign nationals, and individuals without regard to 2 U.S.C. 441a, 441b, 441c, and 441e?

(5) Are there any additional requirements with respect to the convention?

The Act prohibits a corporation, including a nonprofit corporation, from making contributions or expenditures in connection with a Federal election. 2 U.S.C. 441b(a).⁴ This prohibition includes both direct and indirect payments or gifts of money, services, or anything of value to a candidate. 2 U.S.C. 441b(b)(2). The Act, however, permits a corporation to establish and administer and to solicit voluntary contributions to a separate segregated fund to be utilized

⁴ See also 2 U.S.C. 441a(a); 441c; and 441e.

for political purposes. 2 U.S.C. 441b(b)(2)(C); 11 CFR 114.5. Commission regulations also permit a corporation to use its treasury funds to sponsor and finance campaign-related appearances by candidates in limited circumstances and before certain, defined groups of persons. See 11 CFR 114.3 and 114.4.

You have presented the public appearances of presidential candidates at the Foundation's proposed convention as a nonpartisan candidate debate. Commission regulations specifically provide that a qualified nonprofit corporation's sponsorship and financing of such debates is within the exemptions to the Act's prohibition on corporate contributions and expenditures. See 11 CFR 110.13 and 114.4(e). The regulations further state that the structure of candidate debates is left to the discretion of the staging organization provided that the debates include at least two candidates and are nonpartisan in that they do not promote or advance one candidate over another. 11 CFR 110.13(b).

The Commission notes that your proposed candidate debate features individual appearances by each of the candidates at separate times over the course of the convention rather than concurrent, face-to-face appearances. Such face-to-face appearances or confrontations have historically been an inherent characteristic of candidate debates since the prototypical Lincoln-Douglas Debates in 1858 and, more recently, the presidential debates in 1960, 1976, 1980, and 1984.⁵ Although the format and structure of these debates varied from one instance to another, the common element in all of them was a face-to-face confrontation. The Commission's nonpartisan candidate debate regulations were drafted with this historical, traditional concept of candidate debates in mind. Accordingly, the Commission does not view your proposed candidate appearances as constituting a candidate debate.

Thus, your description of these candidate appearances presents the broader question whether the Foundation's proposed sponsorship of, and proposed means of financing, the convention will constitute contributions or expenditures in connection with a Federal election. See 2 U.S.C. 441b. As the Commission stated in Advisory Opinion 1986-26, it has addressed, in a variety of circumstances, whether or not the sponsorship of public appearances by individuals who are candidates for Federal office were campaign related. The Commission has taken the position that public appearances by candidates at such events as charitable functions, public affairs programs, constituent service activities, and testimonials, or as part of their private employment will, nevertheless, be campaign related if such events include any express advocacy of the election or defeat of any candidate or the solicitation of contributions to any candidate or political committee. The Commission has also concluded that the absence of express advocacy or solicitations will not preclude a determination that public appearances by candidates are campaign related. See opinions cited at page 6 of Advisory Opinion 1986-26 (Advisory Opinions 1984-13, 1982-16, 1981-37, 1980-89, 1980-22, 1980-16, 1978-4, and 1977-42).

You intend to invite individuals associated with the two major political parties to address the convention and to answer questions from the floor of the convention. You plan to invite these

⁵ See generally, The Past and Future of Presidential Debates (A. Ranney ed. 1979) at pp. 1-50. The cited article, by Evron M. Kirkpatrick, deals primarily with the 1960 debates, but it also refers to the Dewey-Stassen debate in the 1948 Oregon primary, the Stevenson-Kefauver debate in the 1956 Florida primary, and the Kennedy-Humphrey debate in the 1960 West Virginia primary as forerunners of present-day presidential debates.

individuals on the basis of their candidacy or potential candidacy for the Presidency in 1988, in that you will invite all individuals associated with the two major parties who have either registered a principal campaign committee with the Commission or have publicly announced the formation of an exploratory committee with respect to the 1988 presidential nomination or election. Your characterization of these appearances as a candidate debate further indicates that their appearances are related to the 1988 presidential campaign. The candidates will be allowed to address the convention on any topic or topics of their own choosing and, presumably, may discuss or advocate their own candidacy as part of their remarks. Your question whether these candidates may be identified as candidates in their introductions and in the convention literature also implies that the appearances are intended to be campaign related. In these respects, your proposed activity is similar to that addressed in Advisory Opinion 1984-13 and leads to the similar conclusion that our proposed candidate appearances will be campaign related.⁶

This conclusion is not altered by the Foundation's intention that it will not permit public demonstrations from the floor of the convention to support or oppose any candidate and will not permit any express advocacy of the election or defeat of any candidate or the solicitation of contributions to any candidate or candidate's committee. It is also not altered by the Foundation's promise that it will not pay any honorarium to any candidate or will not reimburse any candidate or accompanying staff for transportation, travel, and lodging expenses, and will not engage in any activities with any candidate or political committee before, during, or after the convention. The Commission notes that similar factors were also absent in Advisory Opinion 1984-13.

Accordingly, the Foundation's sponsorship and financing of the convention will constitute contributions or expenditures within the meaning of 2 U.S.C. 441b and, thus, will be prohibited unless specifically exempted by the Act and regulations. Commission regulations permit a corporation, including a nonprofit corporation, to sponsor either partisan or nonpartisan candidate appearances before the specified groups but not before the general public. See 11 CFR 114.3(c)(2) and 114.4(a)(2). The Foundation has no members and plans for the convention to be open to the general public rather than limited to the specified groups for either partisan or nonpartisan candidate appearances. Therefore, these exemptions are not applicable to the Foundation's proposed convention. As discussed above, the proposed activity also does not qualify for the nonpartisan candidate debate exemption. Since the Foundation may not use its own funds to defray the costs of the convention, the Commission need not reach any questions regarding the sources of the Foundation's funds.

The Commission emphasizes that it does not purport to express any opinion with respect to the Foundation's qualifications for tax-exempt status under 26 U.S.C. 501(c)(3) or any other tax ramifications, since such questions are outside its jurisdiction.

⁶ Your situation differs from that in Advisory Opinion 1984-13 in that the Foundation is a 501(c)(3) organization whereas the requestor in Advisory Opinion 1984-13 was a trade association. In addition, you have cited Revenue Ruling 86-95, 1986-32 I.R.B. 4, in support of your position. This revenue ruling, which concluded that a proposed public forum featuring Federal candidates would meet the nonpartisan test for 501(c)(3) organizations, dealt with only the specific factual situation addressed in the ruling. Furthermore, the recognition of a special status for 501(c)(3) organizations in Commission regulations does not extend to sponsoring and financing campaign-related public appearances by candidates other than under the nonpartisan candidate debate regulations.

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 yours,

(signed)

Joan D. Aikens
Chairman for the
Federal Election Commission

Enclosures (AOs 1986-26 and 1984-13)