



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

September 1, 1978

AO 1978-60

Honorable Harold S. Sawyer  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Sawyer:

This is in response to your letter of August 8, 1978, requesting an advisory opinion concerning the application of the Federal Election campaign Act, as amended ("the Act") and commission regulations to the use of a film given to you by NBC.

Your letter states that on July 18, 1978 there was news coverage of the vote by the House Judiciary committee on extending the ratification period for the Equal Rights Amendment, NBC used a video tape segment of your speech to that committee on its national news program. You requested a copy of the video tape from NBC which they provided to you free of charge and which you currently have in your possession.

Specifically you ask what limitations there are under the Act on the use of that film in campaign related activities. Under 2 U.S.C. 441b(a) it is unlawful for a corporation to make a contribution or expenditure in connection with any [Federal] election and unlawful for any candidate to knowingly accept any contribution prohibited by 441b. For purposes of 441b "contribution or expenditure" includes "anything of value to any candidate . . . in connection with any election to any [Federal] office," 441b(b)(2).<sup>1</sup> The Commission concluded in AO 1977-4 that a gift of goods by a corporation would not violate the Act if the recipient was not a candidate and if the goods were not intended for use nor actually used in connection with any Federal election campaign, If, however, the recipient is a candidate or if the gift is used in connection with a Federal election campaign, the gift would be an "in-kind contribution"<sup>2</sup> in connection with" a Federal election in violation of 2 U.S.C. 441b.

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<sup>1</sup> You should note that this specific definition is broader than the general definition contained in 2 U.S.C. 431(e), which defines as a contribution "any thing of value given" for the purpose of influencing a person's nomination or election to Federal office.

<sup>2</sup> 100.4(a)(iii) of the Commission regulations provides that the amount of a contribution of a thing of value is the difference between the usual and normal charge for the goods at the time of the contribution and the amount that was charged.

Commission reports indicate that you are a candidate for Federal office. Thus, the Commission concludes that use of this film which you received free of charge, in connection with your election would result in the film being an "in-kind contribution" from a corporation "in connection with" a Federal election; therefore, any use in campaign related activities would be prohibited under the Act.

You could, however, use the film in campaign related activities if you pay NBC the usual and normal charge<sup>3</sup> for the film so that it would not be an in-kind contribution in connection with a Federal election. In this situation the usual and normal charge would be the amount which NBC regularly charges for videotape copies to any person who, having appeared in an NBC newscast, requests a copy of the videotape segment. If, however, established NBC policy and practice is to provide, upon request, a copy of a videotape free of charge to any member of the public appearing in a newscast, then the free film would not be given in connection with a Federal election nor given to influence your election. Accordingly, it would not be a contribution under the Act.<sup>4</sup>

This response constitutes an advisory opinion concerning the application of a general rule of law stated in the Act, or prescribed as a Commission regulation, to the specific factual situation set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

Joan D. Aikens  
Chairman for the  
Federal Election Commission

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<sup>3</sup> 100.4(a)(1)(iii)(B)(1) defines "usual and normal charge" for goods to be the price of those goods in the market from which they ordinarily would have been at the time of their contribution.

<sup>4</sup> In responding to Advisory Opinion Request 1976-56 the Commission concluded that an offer of complimentary hotel accommodations to a Federal candidate would not be presumed to be "in connection with" a Federal election, upon a showing that accommodations are offered by the hotel in the ordinary course of business to non-candidates as well as candidates, and that hotel could reasonably expect to derive commensurate commercial return from the offer.