



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 13, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1981-37

Honorable Richard A. Gephardt
House of Representatives
Washington, D.C. 20515

Dear Congressman Gephardt:

This responds to your letter of August 14, 1981, as supplemented by letter of September 8, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to your participation as moderator for a proposed series of public affairs forums.

You state that you are considering signing an agreement with Delano Productions, Inc., of Saint Louis, Missouri ("Delano") calling for your participation in a series of public affairs forums with prominent national figures before live audiences. These forums would be held monthly in St. Louis which is both in and adjacent to the congressional district you represent.

Under the proposed agreement you could moderate each program and participate with the guest and the audience in dialogue on the matters of public interest and presented in the program. Delano will direct, record, and have complete financial control over the programs and subsequent telecast and/or broadcast (including any re-broadcast) under the agreement. Delano will have all television and radio rights to the program. You will receive no compensation for your participation in any program. Delano will have the right to sell tickets to the public and to retain all ticket sale proceeds. It may sell advertising in connection with the presentation of each program on radio and/or television, except that no political advertising will be presented during or adjacent to any program or re-broadcast of any program. Delano may accept in kind products or services for promotional consideration. The proposed agreement also states that Delano will have the right to sell transcripts of each program. In addition, all other revenues will be retained by Delano. Neither you nor your campaign committee will receive any financial benefit from the public affairs programs.

You request an advisory opinion as to whether corporate and/or union purchases of tickets or advertising for television or radio presentations of the public affairs programs constitute prohibited campaign contributions under the Act.

It is unlawful for a corporation to make a "contribution" or "expenditure" in connection with any election for Federal office. 2 U.S.C. 441b. For purposes of 441b the terms "contribution or expenditure" include "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value... to any candidate, [or] campaign committee... in connection with any [Federal] election..." 2 U.S.C. 441(b)(2). The Act further defines "contribution" and "expenditure" to include gifts of anything of value and any purchase or payment made for the purpose of influencing the nomination or election of any person to Federal office. 2 U.S.C. 431(8) and 2 U.S.C. 431(9).

Where the purpose of the activity is not to influence the nomination or election of a candidate for Federal office but rather in connection with the duties of a Federal officeholder, the Commission has consistently held that no contribution or expenditure results under the Act. In Advisory Opinion 1980-89 the Commission found that donations of food and beverages by corporations (and others) to a reception held by a congressman for his advisory committee on the arts were not contributions as long as electioneering was not involved. Advisory Opinion 1977-54 held that funds contributed by corporations (and others) to a considered contributions, even though the campaign was headed by a congressional candidate, provided that the campaign did not involve electioneering for the candidate. Other examples of activities having possible election related aspects but not considered as connected with or influencing an election, include: where a candidate for Federal office hosted a radio talk show, Advisory Opinion 1977-42; where a union was permitted to pay the salaries of interns who manned a mobile congressional office in a congressman's district, Advisory Opinion 1979-25; and where a congressman established an informational forum in order to "bring Washington home to the citizens" of his district, the Commission's response to Advisory Opinion Request 1976-89. See also Advisory Opinions 1980-22, 1979-2 and 1978-4.

Although it is possible that your involvement in the public affairs programs may indirectly benefit future campaigns, the Commission concludes that the major purpose of the activity contemplated by the above proposed agreement would not be the nomination or election of you or any other candidate to Federal office. Therefore, the Commission concludes that corporate and/or union purchases of tickets or advertising for television or radio presentation for this proposed series of public forums would not be prohibited under the Act.

This opinion is conditioned, however, on (i) the absence of any communication expressly advocating your nomination or election or the defeat of any other candidate, and (ii) the avoidance of any solicitation, making or acceptance of campaign contributions in connection with this activity. The Commission notes that, according to your proposal, no political advertising will be sold by Delano for presentation either during or adjacent to the programs. Accordingly, the Commission conditions this opinion on Delano's compliance with its states intention not to sell political advertising for any broadcast or rebroadcast of the programs. In addition, Delano's sale of the transcripts of each program, and their use by other persons (including corporations and labor organizations), would be limited by Advisory Opinion 1980-

90. There, the Commission held that a corporation could not distribute taped interviews of presidential candidates, who were interviewed for the purpose of getting their views as candidates, to commercial and cable television stations since that would result in a contribution to their campaigns. See also Advisory Opinion 1979-70. The Commission does not reach other issues that may be raised with respect to application of the Act to the use (or rebroadcast) of the programs by any person in circumstances where such use may occur in connection with a Federal election.

This opinion supersedes those portions of Advisory Opinions 1975-8, 1975-13, 1975-20 and 1975-108 which hold that all speeches of a candidate for Federal office made before a substantial number of people, who comprise a part of the electorate with respect to which the individual is a candidate, are presumably made for the purpose of enhancing the individual's candidacy. In addition this opinion qualifies Advisory Opinion 1977-31 where the Commission held that a corporation's employment of a candidate as a announcer for a series of corporate sponsored radio announcements constituted something of value, and therefore, a contribution to the candidate.

The Commission expresses no opinion as to possible application of Rules of the House of Representatives since those Rules are not within its jurisdiction. The Commission also expresses no opinion as to any application of the Commissions Act of 1934, as amended, or Federal Communications Commission rulings and regulations to your participation in the programs.

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)

John Warren McGarry
Chairman for the
Federal Election Commission

Enclosures (AOs 1977-42, 1977-54, 1978-4, 1978-15, 1979-2, 1979-25, 1979-70, 1980-22, 1980-90 and Re: AOR 1976-89)