



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 27, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1982-44

Anthony S. Harrington
Joseph A. Rieser, Jr.
Carol Darr
DEMOCRATIC NATIONAL COMMITTEE
1625 Massachusetts Avenue, N.W.
Washington, D.C. 20036

Mark Braden
REPUBLICAN NATIONAL COMMITTEE
310 First Street, S.E.
Washington, D.C. 20003

Dear Ms. Darr and Messrs. Harrington, Rieser, and Braden:

This responds to your letter of June 10, 1982, requesting an advisory opinion on behalf of the Democratic National Committee ("DNC") and the Republican National Committee ("RNC") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the acceptance by both the DNC and the RNC of free time offered by an incorporated cable television network.

Your request states that WTBS is a "super satellite" television station based in Atlanta, Georgia and owned by Turner Broadcasting System, Inc. (hereinafter, "Turner, Inc.").¹ By means of satellite telecommunication, Turner, Inc. provides several channels of cablecast programming to a network of cable system operators. You state that in order to better serve the public interest, Turner, Inc., had simultaneously offered to make two hours of program time on one of its channels available to both the DNC and the RNC. The offer was accepted by the DNC and tentatively accepted by the RNC. However, they and WTBS have tentatively agreed that they will pay for the cablecast time to the extent that the Commission so requires in these

¹ The Commission notes that WTBS is licensed by the Federal Communications Commission ("FCC") to broadcast in the Atlanta, Georgia vicinity. Turner, Inc. programming is transmitted via satellite to cable system operators throughout the United States who are also regulated by the FCC.

circumstances, with bills to be submitted after the cablecast if time constraints preclude a response by the Commission before then.

Since the DNC has accepted the earlier of the dates offered, it has more fully developed its program for the cablecast.² That program was to consist of a two-hour presentation by various leading Democrats (1) discussing public issues and programs (including civil rights, the economy, energy and environment, etc.) from the Democratic Party perspective and (2) soliciting contributions to support the Democratic National Committee. The individuals participating were to include various Democratic Party officials, various Democratic Federal office holders (some of whom are candidates for election) and various Democratic State and local office holders (some of whom also are candidates for election). Some participants in the cablecast were also to urge the viewers to support Democratic candidates generally, but would not advocate the election or defeat of any specific candidates.

The specific questions presented in your request are as follows:

- 1.) Whether the donation of such free cablecast time by Turner, Inc. would constitute a prohibited corporate contribution under 2 U.S.C. 441b.
- 2.) If the donation of such free time would constitute a contribution, then whether the value of the cablecast time may be allocated according to the nature and purposes of the program actually aired so that the portion of the time allocable to non-Federal activity may either be donated by Turner, Inc. or paid for with funds which do not conform to the limitations and prohibitions of the Act.

The Commission concludes that the donation of free cablecast time by Turner, Inc. to both the DNC and the RNC would not constitute a prohibited corporate contribution. The Act prohibits "any corporation whatever" from making contributions or expenditures in connection with federal elections. See 2 U.S.C. 441b(a). Congress has enacted limited exceptions to this prohibition. Corporate contribution prohibitions would apply with equal force to all media corporations unless their activities fall within the specific exemption for any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication which are not owned or controlled by any political party committee, political committee or candidate. See 2 U.S.C. 431(9)(B)(i); 11 CFR 100.7(b)(2), 100.8(b)(2).

In Readers Digest Association, Inc. v. Federal Election Commission, 509 F.Supp. 1210 S.D.N.Y. (1981), the court discussed the threshold questions for the Commission to address when reviewing the scope of the media exemption. 2 U.S.C. 431(9) (B) (i). It stated that, "the two

² The Commission notes that the DNC program was, in fact, aired shortly following submission of this request. Pursuant to 2 U.S.C.437f, the Commission may issue any advisory opinion only with respect to a specific transaction or activity proposed by the requestor. Accordingly, the Commission limits this opinion to the program proposed by the DNC and expresses no view as to any program which differs "in any material aspect from the one described in your request. See 2 U.S.C. 437f(c).

questions on which the exemption turns - whether the press entity is owned by the political party or candidate and whether the press entity was acting as a press entity in making the distribution...." (Id. at 1215). In the present case, Turner, Inc. facilities are not owned or controlled by either political party and the Commission concludes that the distribution of free time to both political parties is within the broadcaster's legitimate broadcast function and, therefore, within the purview of the media exemption.³

The Commission is of the opinion that the program described is a commentary and, therefore, within the news story, editorial, or commentary exemption. Although there is little legislative history concerning this provision, the House Report on H.R. 16090 stated that the provision "assures the unfettered right of the newspapers, television networks and other media to cover and comment on political campaigns." See H.R. Report No. 93-1239, 93d Congress, 2d Sess. 4 (1974).

Political parties are necessary participants in political campaigns. The Commission is of the opinion that providing two hours of free time to both major political parties to discuss issues, to attempt to show the differences between the two parties and to encourage support of political parties is a vital part of covering and commenting upon political campaigns.

Although the statute and regulations do not define "commentary," the Commission is of the view that commentary cannot be limited to the broadcaster. The exemption already includes the term "editorial" which applies specifically to the broadcaster's point of view. In the opinion of the Commission, "commentary" was intended to allow the third persons access to the media to discuss issues. The statute and regulations do not define the issues permitted to be discussed or the format in which they are to be presented under the "commentary" exemption nor do they set a time limit as to the length of the commentary.

In response to your second question, since there is no contribution resulting from the provision of the free cablecast time, no allocation is necessary.

Any deviation from the facts presented in this request would compel the Commission to reconsider whether, based on the new facts, the news story, editorial or commentary exemption would apply.

³ In an earlier matter Under Review (MUR) 486, the Commission held that the donation of free newspaper space to Senator Charles Percy and his opponent, Alex Seith, for the purpose of discussing the major issues in the campaign, was not a corporate contribution considering it to fall within the media exemption.

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,

(signed)

Frank P. Reiche
Chairman for the Federal Election Commission