



FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 24, 1986

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1986-22

Mr. Keith Bland
WREX-TV
P.O. Box 530
Rockford, Illinois 61105

Dear Mr. Bland:

This responds to your letter of June 16, 1986, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to an earned discount or rebate on the cost of broadcast advertising.

You state that WREX-TV, owned by the Gilmore Broadcasting Corporation, is currently running a promotion to encourage advertisers to purchase more air time on the station during the period from June 1986 through January 1987. According to the terms of this promotion, any advertiser that increases its expenditure for television advertising on WREX-TV during this eight-month period by a total of \$12,500 over the same period last year will receive two tickets for a cruise in February 1987, or their cash equivalent (approximately \$3,000). Clients who want to participate in this "incentive program" must sign a "letter of intent" stating that they intend to participate and that they anticipate spending enough during the eight-month period to earn the cruise tickets. You state that the proposed promotion, which is essentially a form of earned discount on air time, will be offered to any political candidate who wishes to participate.

You ask whether the proposed earned discount or rebate on the cost of broadcast advertising, if provided to a political candidate or committee, would result in a campaign contribution. You also ask what documentation or disclosure, if any, will be required of the television station, and whether there are any other ramifications of the proposed activity under the Federal election campaign laws.

Under the Act, a corporation is prohibited from making a contribution or expenditure in connection with any Federal election. 2 U.S.C. 441b(a). The term contribution is defined to

include "anything of value." 2 U.S.C. 441b(b)(2) and 11 CFR 114.1(a)(1). Commission regulations describing the term "anything of value" state that if goods or services are provided at less than the usual and normal charge, the difference between the usual and normal charge and the sale price would be a contribution from the seller. 11 CFR 100.7(a)(1)(iii)(A); see also Advisory Opinion 1985-28.

In the situation you present, WREX-TV proposes to make the earned discount or rebate available to political candidates and committees on the same terms and conditions as it does to other advertisers. For this reason, the Commission concludes that the station will be viewed as providing services to political candidates and committees at the usual and normal charge and therefore will not be viewed as making a prohibited corporate contribution.

With respect to your second question, the Commission concludes that WREX-TV will not be subject to any specific documentation or disclosure requirements under the Act. The station may, however, have documentation requirements to establish that it provided broadcast time to political candidates and committees at the lowest unit rate, or comparable use rate, under 47 U.S.C. 315(b) and applicable rules and regulations of the Federal Communications Commission.

Finally, the Commission notes that if qualifying candidates or committees elect to receive the cruise tickets rather than the cash equivalent, their use of such tickets would raise additional questions. See, e.g., 2 U.S.C. 439a. Such questions are not addressed by this opinion, however, because your request does not present a specific transaction or activity in this regard and because no candidate or committee has joined in making your request. See 11 CFR 112.1(b).

The Commission expresses no opinion as to the application of the Communications Act and regulations of the Federal Communications Commission to this activity since those issues are not within its jurisdiction.

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 (AO 1985-28)