



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 12, 1978

AO 1977-42

Mr. Ken Hechler
Box 818
Huntington, West Virginia 25712

Dear Mr. Hechler:

This responds to your letter of September 12, 1977, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended, ("the Act") to radio programs in which participated as host and interviewer.

You state that you hosted two interview programs aired on two different radio stations in West Virginia in one of which live phone calls from the listening audience were accepted. A newspaper clipping, enclosed with your letter, describes one of the call-in programs (one hour long and broadcast weekly) in which representatives of Federal, State, and local government agencies and of private industry discussed housing issues. You explain that the other program, on the air for an hour five days a week, was "an interview and talk show program dealing with a different issue every day." The weekly program was paid for and sponsored by a noncorporate business enterprise while, in the case of the Monday through Friday programs, you were employed and paid by the radio station which broadcast them.

You also state that you are a 1978 candidate for nomination to the House of Representatives from the 4th Congressional District of West Virginia. You filed with the Commission as a Congressional candidate on July 5, 1977, and designated a principal campaign committee. You filed as a candidate with the West Virginia Secretary of State on January 11, 1978. The Commission understands that the programs began in mid-August of 1977 and ended in October, well before the 1978 election year.

You ask whether the funding of your appearances on these interview programs involves the making of a "contribution" to you by the private sponsor of the weekly program and by the radio station which carried the Monday through Friday program. Since the programs have now ended the issue is whether reports filed to date should disclose the costs incurred for the programs as contributions in kind to your campaign and corresponding expenditures.

The definitions of "contribution" and "expenditure" in 2 U.S.C. 431 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. Any gift or payment constituting a contribution or expenditure is required to be disclosed under the Act. 2 U.S.C. 432, 434. Contributions are also subject to limitation and, in some cases, are prohibited. See 2 U.S.C. 441a, 441b, 441c, et seq. Recent advisory opinions of the Commission have concluded that a "contribution" or "expenditure" would not necessarily occur in certain specific circumstances where the major purpose of activities involving appearances of candidates for Federal office was not to influence their nomination or election. These opinions were, however, conditioned on (i) the absence of any communication expressly advocating the nomination or election of the candidate, and (ii) the avoidance of any solicitation, making or acceptance of campaign contributions for candidate in connection with the activity. See Advisory Opinions 1977-54 and 1978-15; see also Advisory Opinion 1978-4, (copies enclosed).

In the circumstances presented by your request it is the Commission's opinion that neither the stations broadcasting your programs, nor the private sponsor of the weekly program, have made a "contribution" or "expenditure" on your behalf, as defined in the Act and Commission regulations. This conclusion is based on an assumption that the programs were not conducted for the purpose of influencing your nomination and that your appearances on the programs did not involve the activity described above. See 2 U.S.C. 431(f)(4)(F).

The Commission expresses no opinion as to any application of the Communications Act of 1934, as amended, or Federal Communications Commission rulings and regulations to your participation in these programs.

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)
Thomas E. Harris
Chairman for the
Federal Election Commission