



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 12, 1984

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1984-41

J. Curtis Herge, Esquire
Sedam & Herge
Attorneys at Law
Suite 1100
8300 Greensboro Drive
McLean, Virginia 22102

Dear Mr. Herge:

This responds to your letter of August 15, 1984, as supplemented by your letter of September 5, 1984, requesting an advisory opinion on behalf of the National Conservative Foundation ("the Foundation") and the National Conservative Foundation Endowment Fund ("the Endowment Fund") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the production and broadcast of a series of radio and television advertisements.

You state that both the National Conservative Foundation and the National Conservative Foundation Endowment Fund are corporations organized under the Virginia Nonstock Corporation Act, and that both corporations have been determined by the Internal Revenue Service to be organizations described in §501(c)(3) of the Internal Revenue Code. You state that the Endowment Fund was established for the express purpose of acting for the benefit of, performing the functions of, and carrying out and supporting the purposes of, the Foundation. You state that the activity to which your request relates is sponsored and conducted by the Foundation and funded by the Endowment Fund. You note that neither the Foundation nor the Endowment Fund supports, endorses, or opposes candidates or political parties.

You state that the Foundation has undertaken a series of activities known as the Media Bias Program ("the Program"). As part of the Program, the Foundation proposes to sponsor a series of radio and television advertisements that will "analyze the objectivity of the media and call the attention of the public to liberal bias and motivational influences in reporters which result in nonobjective reporting of the news." You state that the aim of the project is to attempt to obtain more balanced and objective coverage of political ideas and principles by the media. You also state that the proposed advertisements will not depict or refer to any candidate for office or indicate a preference for any candidate or political party.

You state that the Foundation has set a budget of \$1,000,000 for the proposed radio and television advertisements. You also state that one-half of that amount has been pledged as a contribution to the Endowment Fund by an individual who is a foreign national. This pledge of \$500,000 has been conditioned upon a determination by the Commission that such a donation would not be considered a "contribution" as defined in 2 U.S.C. 441e. You add that broadcast of the advertisements will begin in September 1984 and continue at least through the spring of 1985. You add that the broadcasts may continue through 1985, depending on the adequacy of funds.

According to your request, the Foundation plans to broadcast two radio advertisements and four television advertisements.¹ All of the spots deal with alleged "liberal bias" among the media. Several of the advertisements refer to a "recent survey of news editors, reporters and executives" and to a "1979 study ... of CBS reporters and editors," both of which showed strong support for Democratic candidates in recent elections among those surveyed and very weak support for Republican candidates. The remaining commercials deal with alleged "liberal bias" in the context of news coverage, and do not refer to the partisan political party preferences of news media personnel. Your request poses two questions based upon these facts: (1) whether payments for the proposed advertisements would constitute "expenditures" under 2 U.S.C. 441b; and (2) whether a donation by a foreign national to defray the costs of the proposed advertisements would constitute a prohibited contribution "in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office" pursuant to 2 U.S.C. 441e.

Under 2 U.S.C. 441b(a), corporations are prohibited from making expenditures in connection with any Federal election. For purposes of this section of the Act, the term "contribution or expenditure" is defined to include "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value ... to any candidate, campaign committee, or political party or organization in connection with any election to any of the offices" mentioned in 441b. 2 U.S.C. 441b(b)(2).

With respect to the proposed advertisements in this request, the connection with a Federal election is not apparent as regards three of the television spots captioned "KAL-007," "Bill Moyers," and "Bias-Turner." These spots mention no candidate for political office, no political party, no incumbent Federal officeholder, no past or future Federal election; nor do they otherwise include statements that reflect an election-connected or election-influencing purpose. Accordingly, payments made by a corporation to finance such advertisements would not be contributions or expenditures for purposes of either 2 U.S.C. 441b or the Act generally, including 2 U.S.C. 441e. See the definitions of "contribution" and "expenditure" in 2 U.S.C. 431(8) and (9).

The Commission also considered the application of the Act to the three advertisements captioned "CBS" and "Lichter-Rothman," but was unable to reach a decision by the required

¹ The actual scripts of the advertisements are attached to this advisory opinion and are explicitly made a part of the opinion herein rendered.

affirmative vote of four members of the Commission. 2 U.S.C. 437c(c). Accordingly, the Commission is unable to issue an advisory opinion with respect to those three advertisements.

The Commission expresses no opinion regarding the possible effect of the proposed advertisement program on the stated tax exempt classifications of the Foundation and the Endowment Fund, as that subject is 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,

(signed)

Lee Ann Elliott
Chairman for the
Federal Election Commission