

It's an Election Year - What's New from an "FEC" Perspective?

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While station managers spend a lot of time worrying about complying with FCC requirements in an election year, they need to consider the Federal Election Commission as well. Political speech is regulated. Media are exempt from FEC regulation only when it comes to acting in their media capacity; *i.e.*, covering the news, engaging in commentary, or editorializing. But when licensees act in a corporate capacity, just as any other corporation does, there are definite restrictions on station activities. For instance, a corporation cannot make a partisan communication to the general public. Further, there are rules on the use of corporate facilities; there are rules on candidate appearances at corporate facilities; there are rules on the distribution of voter guides and voting records; and there are rules on get-out-the-vote communications, among other things. And if you have a political action committee, there are more rules.

Moreover, with the rise of the Internet as a powerful tool, the FEC has been grappling with whether and how to restrict political speech over the Internet. The issues are difficult because often there is no marginal cost to speech over the Internet, but there is a definite value to that speech.

Thus, for instance, a current open question is whether you can provide on your station web site a link to a candidate's web site. The answer is not always easy. Instead, you need to ask yourself, do you usually provide links to other web sites from within your own web site? From where are those links provided? Are they provided within the context of a news story? If so, then perhaps providing a link within a news story about a candidate is permissible. But if you never provide a link within a news story, then you may be giving something of value to a candidate that you would not provide to a corporation.

What if you normally charge for a link? If you do, then providing a free link to a candidate would definitely be providing something of value and you may be making a corporate contribution. What if you sometimes charge for a link, and sometimes not? Then you have to consider the context in which you are providing the link for free and determine whether it suits the situation of providing a link to a candidate. Thus, your intuition can not necessarily be your guide when it comes to political speech.

Indeed, the Federal Election Commission is now considering 1,200 comments received regarding its November 1999 Notice of Inquiry regarding "Use of the Internet for Campaign Activity." A portion of this notice was devoted to "News Organizations." The FEC asked such basic questions as "under what circumstances

should the Commission regard an Internet site as a 'newspaper, magazine, or other periodical publication' within the meaning of the exemption . . .? Should it make a difference whether the site owner also produces a broadcast or print publication?" In addition, the FEC inquired "whether new rules are needed to determine whether a news organization's Internet activities fall within its legitimate press function. Are there types of web site content that should be regarded as unrelated to the press function?" Thus, you cannot presume that any time you mention a candidate you are exempt from regulation.

What about candidate appearances on the Internet? This was also addressed in the Notice. Again, the FEC stated that it was "interested in comments on how the Act and regulations should be applied when candidates make public appearances via a web site operated by any news organization." While the FEC acknowledged that it had addressed some of these issues with respect to an electronic town meeting "when the news service is a *bona fide* press entity" and had permitted the activity, it indicated a willingness to rethink this position, however, and to consider other issues that may arise with respect to candidate appearances on the Internet.

The one clear answer is that licensees and other Internet participants need to know the rules before they engage in political activity. Our Election Law and Mass Media practice groups would be happy to answer your questions on these matters.