

Summaries of Recent FEC Advisory Opinions

September 2004

FEC Allows Car Dealership to Run Ads

By a vote of 4-0 (with Commissioners Toner and McDonald absent), the FEC on September 9, 2004, allowed the Russ Darrow Group, Inc., a group of auto dealerships, to run television and radio ads in Wisconsin within 60 days of the general election. In Advisory Opinion 2004-31, the FEC concluded that the Group's uncoordinated ads were excepted from the electioneering communications blackout period. The car dealership group asked the question of the FEC because the Group shares a common name with Russ Darrow, Jr., a candidate for the U.S. Senate from Wisconsin. The candidate also is the founder, CEO and Chairman of the Group, although his son and namesake, Russ Darrow III, serves as President and COO and runs the day-to-day business of the Group.

FEC Limits the Press Exception

In Advisory Opinion 2004-30, considered at the September 9, 2004 meeting of the FEC, the FEC declined to recognize Citizens United, a 501(c)(4) advocacy organization, as a "press entity" entitled to the Federal Election Campaign Act's "press exemption" if it were to run television and radio ads within 60 days of the general election promoting a documentary film made by Citizens United about Senators John Kerry and John Edwards and mentioning the names of both candidates. The FEC also declined to allow Citizens United to use the press exception (1) to promote a book about John Kerry written by the President of Citizens United through similar television and radio advertisements or (2) to air the documentary film on television. The prohibitions issued by the FEC come from the fact that corporations, including nonprofit corporations, may not air electioneering communications within 60 days of a general election that feature or mention a federal candidate if, for Presidential candidates, the ads can be received by 50,000 or more persons

Authors

Caleb P. Burns
Partner
202.719.7451
cburns@wiley.law

nationwide. Although media corporations generally are exempt from these prohibitions, the FEC reasoned that Citizens United is in the political advocacy business rather than the business of gathering and disseminating news.

Congressman Seeks Advice on Marriage

At its August 19, 2004, meeting, the FEC approved Advisory Opinion 2004-26, which was requested by Wiley Rein & Fielding LLP on behalf of Congressman Jerry Weller and his fiancée, Zury Rios Sosa, who is both a citizen of Guatemala and a member of its legislature. Ms. Rios Sosa wanted to support Congressman Weller in his reelection efforts; however, federal regulations generally prohibit participation by foreign nationals in U.S. political campaigns. The FEC concluded that Ms. Rios Sosa could take part in Congressman Weller's campaign activities provided that she did not participate in any of the campaign's decision-making processes. Accordingly, the FEC explained that she may attend campaign events, solicit campaign contributions, give speeches and attend campaign meetings, as long as she is not involved in the campaign's management.

FEC Analyzes Medical Organization Affiliation

At its August 12, 2004 meeting the FEC approved an Advisory Opinion concluding that U.S. Oncology, Inc. is affiliated with the physician practices managed by its subsidiaries and, as a result, may solicit the restricted class of the practices for its Federal PAC. The factors considered by the FEC for affiliation were the entities' role in the governance of each other, the parent's control over non-medical matters, long-term financing and physician service on the boards and committees. The FEC also concluded that salaried physicians and nurses are members of the entity's restricted class and are eligible to be solicited to contribute to the PAC.

FEC Upholds Limits on Sale of Information

At its August 12, 2004 meeting, the FEC issued an Advisory Opinion to NGP Software confirming the applicability of a statutory provision that limits the sale of information contained in publicly available FEC disclosure reports to the name and address of PACs for the purpose of soliciting political contributions from them. NGP Software provides clients with software and consulting services for managing political contributions and reporting. It wanted to provide its clients with information regarding contributors that it would cull from publicly available FEC reports. The FEC concluded that the circumstances did not warrant a departure from the language of the statute that states: "information copied from such reports or statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee."