

**STATE OF ARIZONA**  
**OFFICE OF THE ATTORNEY GENERAL**

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<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>TERRY GODDARD ATTORNEY GENERAL</p> <p>July 30, 2003</p>	<p>No. I03-003 (R03-019)</p> <p>Re: Campaign Finance Law</p>
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TO: The Honorable Jim Weiers  
Arizona State Senate

**Questions Presented**

You have asked the following questions concerning the applicability of Arizona's campaign finance laws relating to a candidate's news media appearance or interview:

1. Do the provisions of Arizona Revised Statutes ("A.R.S.") § 16-901.01 mean that a candidate's interview with the news media or a candidate's appearance, individually or with other candidates, on news-oriented radio or television programs would constitute a campaign contribution by that media outlet?
  
2. If an appearance by a candidate on a television or radio outlet is considered a campaign contribution, how is such a contribution to be valued and reported?

## Summary Answers

1. Arizona Revised Statutes § 16-901.01<sup>1</sup>, which contains the definition of “expressly advocates,” does not apply to news media interviews or appearances on news-oriented radio or television programs. News media appearances and interviews do not constitute campaign expenditures by the media entity, and consequently do not result in campaign contributions to a candidate, as long as the news entity is not owned or controlled by a political committee, political party or candidate.

2. Because news media interviews or appearances by a candidate are not campaign contributions, it is not necessary to determine their monetary value for purposes of reporting campaign contributions.

## Background

Candidates for state and local offices in Arizona must file campaign finance reports

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<sup>1</sup>A.R.S. § 16-901.01(A) provides:

A. For purposes of this chapter [chapter 6, title 16], "expressly advocates" means:

1. Conveying a communication containing a phrase such as "vote for," "elect," "re-elect," "support," "endorse," "cast your ballot for," "(name of candidate) in (year)," "(name of candidate) for (office)," "vote against," "defeat," "reject," or a campaign slogan or words that in context can have no reasonable meaning other than to advocate the election or defeat of one or more clearly identified candidates, or

2. Making a general public communication, such as in a broadcast medium, newspaper, magazine, billboard, or direct mailer referring to one or more clearly identified candidates and targeted to the electorate of that candidate(s):

(a) That in context can have no reasonable meaning other than to advocate the election or defeat of the candidate(s), as evidenced by factors such as the presentation of the candidate(s) in a favorable or unfavorable light, the targeting, placement, or timing of the communication, or the inclusion of statements of the candidate(s) or opponents, or

(b) In the sixteen-week period immediately preceding a general election.

disclosing all contributions received. A.R.S. §§ 16-913, -915(A)(2). Organizations that make contributions to candidates or independent expenditures must register as political committees and file campaign finance reports disclosing all contributions and expenditures. *Id.*

A.R.S. § 16-901.01 provides a definition of the term “expressly advocates” for purposes of chapter 6, title 16 (Arizona’s campaign finance laws). The term “expressly advocates” only appears in chapter 6 in the definition of “independent expenditure” in A.R.S. § 16-901(14). That definition provides, in part, as follows:

“Independent expenditure” means an expenditure by a person or political committee, other than a candidate’s campaign committee, that *expressly advocates* the election or defeat of a clearly identified candidate, that is made without cooperation or consultation with any candidate or committee or agent of the candidate and that is not made in concert with or at the request or suggestion of a candidate, or any committee or agent of the candidate.

(Emphasis added.)

Arizona’s campaign finance laws provide a specific exemption for broadcasts and publications by news media organizations. Section 16-901(8)(a), A.R.S., provides that the term “expenditure” does not include “[a] news story, commentary or editorial distributed through the facilities of any telecommunications system, newspaper, magazine or other periodical publication, unless the facilities are owned or controlled by a political committee, political party or candidate.”

### **Analysis**

#### **A. Applicability of the definition of “express advocacy” to news coverage.**

The definition of “expressly advocates” in A.R.S. § 16-901.01 applies only to a communication that is an “independent expenditure.” A.R.S. § 16-901(14). A communication is an “independent expenditure” only if it is made without cooperation or consultation with a candidate or a candidate’s committee or agent. *Id.*

Your question concerns press interviews or news appearances by a candidate. An interview or news appearance could not be conducted without the candidate's cooperation or consultation. Therefore, a news agency's production or publication of an article or story relating to a candidate's interview or news appearance would not come within the definition of "independent expenditure." Consequently, the definition of "expressly advocates" in A.R.S. § 16-901.01, which applies only to independent expenditures, is not applicable to the scenario you present.

**B. Applicability of the news media exemption.**

An ancillary question is whether some other provision of Arizona's campaign finance laws would require the media or a candidate to report the value of publishing or broadcasting an interview with a candidate. Historical background relating to Arizona and federal campaign finance provisions is helpful in making this determination.

In 1988, even though there was not yet a news media exemption in Arizona's campaign finance laws, the Arizona Attorney General opined that newspaper editorials would not constitute a campaign contribution, stating, "regulation of newspaper editorials would clearly run afoul of constitutional guarantees of freedom of the press. The First Amendment protects the media from indirect as well as direct restraints on publication . . . ." Ariz. Att'y Gen. Op. I88-020. In 1993, the Arizona Legislature created a statutory exemption from the definition of "expenditure" for a news story, commentary or editorial distributed by the news media. A.R.S. § 16-901(8)(a); 1993 Ariz. Sess. Laws, ch. 226, § 1.

Arizona's news media exemption is almost identical to an exemption in federal law, 2 U.S.C. § 431(9)(B)(i).<sup>2</sup> When Congress adopted the federal exemption in 1974, it stated it had no intention "to limit or burden in any way the first amendment freedoms of the press and of association. Thus the exclusion assures the unfettered right of the . . . media to cover and comment on political campaigns." H. Rep. No. 93-943 at 4 (1974).

Two federal district court decisions considering ramifications of the federal news media exemption aid in understanding Arizona's exemption. In *Fed. Election Comm'n v. Phillips Publ'g, Inc.*, 517 F. Supp. 1308 (D.D.C. 1981) and *Reader's Digest Ass'n, Inc. v. Fed. Election Comm'n*, 509 F. Supp. 1210 (S.D.N.Y. 1981), the courts determined that because the federal press exemption was enacted to accommodate the news media's First Amendment rights, the Federal Elections Commission's ("FEC") authority to investigate allegations of campaign finance violations by news media is limited. Specifically, the courts held that the FEC's investigation of press entities is limited to an inquiry into whether the entity is owned or controlled by a political party or candidate, and whether it is performing the normal functions of a press entity when it distributes information or materials. *Phillips Publ'g, Inc.*, 517 F. Supp. at 1313; *Reader's Digest Ass'n, Inc.*, 509 F. Supp. at 1214-15. If the initial inquiry reveals that the news entity is not controlled by a political party or candidate and it is performing normal press entity functions, because further investigation would encroach upon the media's First Amendment rights, it is prohibited. *Id.*

Following the issuance of these opinions, the FEC has issued several advisory opinions stating that publication of candidate interviews by news entities does not constitute a campaign

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<sup>2</sup> Federal law exempts from the definition of expenditure "any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by a political party, political committee, or candidate."

contribution or expenditure. Specifically, the FEC has advised that a media entity would not be making a campaign contribution or expenditure by providing on its website gavel-to-gavel coverage of the Republican and Democratic national conventions, which would include interviews with political experts and candidates, and commentary by news personalities. FEC Advisory Opinion 2000-13.

The FEC made a similar determination regarding a media entity that proposed to conduct and provide news coverage of “Electronic Town Hall” discussions between presidential candidates and a live audience of invited guests via two-way television links. FEC Advisory Opinion 1996-16. The candidates would have the opportunity to make brief remarks and would be asked questions by audience members. The FEC found this proposal to be within the media exemption, stating that the entity proposed to “create and cover a news event in much the same way as a newspaper would arrange, report and comment on its own staff interview with a political candidate or cover a press conference.” *See also* FEC Advisory Opinion 1987-8 (publication of interviews of presidential candidates for the two major political parties in a news magazine, television series, and a book was not a contribution or expenditure). The FEC’s reasoning is directly applicable here.

The news media exemption in both federal and Arizona law accommodates the First Amendment protections the press enjoys when covering and reporting on political campaigns and candidates. Candidate interviews and appearances on news programs are exempted by Arizona’s news media exemption from campaign finance reporting, as long as the news entity is not owned or controlled by a political committee, political party or candidate.

## **Conclusion**

The news gathering and reporting activities of a news media entity that is not owned or controlled by a political committee, political party or candidate, including interviews with candidates and their appearances on radio or television programs, do not constitute an expenditure made by the media entity or result in a contribution to a candidate. Because the value of the news coverage need not be reported by the media or candidates, it is not necessary to determine its monetary value.

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