

MAINE STATE LEGISLATURE

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January 2, 1969

Representative Jon A. Lund
114 State Street
Augusta, Maine 04330

Re: State statutory restrictions on
educational television (ETV)
program content.

Dear Representative Lund:

We are pleased to honor your request dated December 20, 1968 for an opinion on the above captioned matter.

SYLLABUS:

20 M.R.S.A. §2606 (1964) prohibiting educational television stations receiving state aid from using their facilities for certain political broadcasts, does not conflict with 47 U.S.C.A. §315(a) (the so-called "equal-time" law) because the federal law does not require such stations to broadcast programs of the type forbidden by the Maine law.

FACTS:

20 M.R.S.A. §2606 (1964) states:

"None of the facilities, plant or personnel of any educational television system which is supported in whole or in part by state funds shall be used directly or indirectly for the promotion, advertising or advancement of any political candidate for any municipal, county, state or federal office or for the purpose of advocating or opposing any specific program, existing or proposed, of governmental action which shall include, but not be limited to, constitutional amendments, tax referendums or bond issues."

Criminal penalties are provided for violation of this section.

Section 315(a) of the Communications Act of 1934 [now codified as 47 U.S.C.A. §315(a)] provides:

"If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station; Provided, That such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is imposed upon any licensee to allow the use of its station by any such candidate. Appearance by a legally qualified candidate on any--

- (1) bona fide newscast,
- (2) bona fide news interview,
- (3) bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary), or
- (4) on-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto),

shall not be deemed to be use of a broadcasting station within the meaning of this subsection. Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this chapter to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance."

You have furnished us with a recent Federal Communications Commission press release which in substance states that the Commission encourages radio and television stations to make their facilities available to candidates for public office. The release cites the following language from Farmers Educ. and Co-op. Union of America v. WDAY, Inc.:

"The thrust of Sec. 315 is to facilitate political debate over radio and television. Recognizing this, the (FCC) considers the carrying of political broadcasts a public service criterion to be considered both in license renewal proceedings, and in comparative contests for a radio or television construction permit." 360 U.S. 525, 534, 79 S.Ct. 1302, 1308, 3 L.Ed.2d 1407, 1414 (1959).

QUESTION:

Do the restrictions embodied in 20 M.R.S.A. § 2606 (1964) conflict with 47 U.S.C.A. §315(a)?

ANSWER:

No.

OPINION:

47 U.S.C.A. §315(a) in terms specifically disavows any intent to force FCC licensees to carry broadcasts of the type forbidden by 20 M.R.S.A. § 2606 (1964). We point to the following language in the federal statute:

"No obligation is imposed on any licensee to allow the use of its station by any...candidate (for any public office)".

The FCC press release and the language of the WDAY case indicate only that the FCC and §315(a) nonetheless encourage the use of the airwaves for political debate, and that licensees, who choose not to carry political broadcasts, but to hide behind the language in §315(a) just quoted, may jeopardize their position before the FCC in later license renewal hearings.

20 M.R.S.A. §2606 (1964) and 47 U.S.C.A. §315(a) are consistent. Under federal law, an FCC licensee has the choice of permitting political candidates to use its broadcast facilities (in which case the licensee must then grant equal time to opposing candidates); or of refusing to allow political broadcasts at all. The Maine statute removes the first choice. Such removal, in our view, does not rise to the status of a challenge to the federal government's pre-emption of broadcast regulation.

Very sincerely yours,

ROBERT G. FULLER, JR.
Assistant Attorney General

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