

December 5, 1967

Mr. Douglas Anello
National Association of Broadcasters
1912 K Street, N. W.
Washington, D. C. 20006

Mr. Grover Cobb
Station KVCB
Great Bend, Kansas

Dear Doug and Grover:

I am belatedly getting around to trying to clear up the matter we discussed during the question and answer period after my speech in Los Angeles concerning the cigarette problem. As I recall it, the question posed was whether a station which carried public safety spots warning of the hazards of smoking but no cigarette commercials would be required under the Fairness Doctrine to provide time for the tobacco interests to present their side of the health hazard dispute. I indicated I thought the station would have to provide time for this purpose, but that obviously it would not be required to carry commercials free. Rather, it would be obliged to present news, discussion programming, or institutional spots by the Tobacco Institute or others countering the claims of the Cancer Society, Heart Association, etc.

Both of you indicated you believed this was inconsistent with what we had said in our clarifying letter to Tom Dougherty under date of September 21, 1967. I do not think this is the case. The question that Tom had raised was stated, in the letter, as follows:

"Specifically, you inquire whether the presentation of health hazard programming, in line with the Commission's ruling, in turn gives rise to an obligation to afford time to the viewpoint of spokesmen for the cigarette advertisers to rebut such programming, and in this connection request clarification of paragraph 33 of our September 8 ruling, and specifically the following sentence: 'The Fairness Doctrine affords an avenue for presenting in regular program time the viewpoint of responsible spokesmen for the cigarette advertisers in rebuttal to any health hazard claims made in opposition to cigarette commercials.'"

We indicated that the sentence he had quoted stated our position inadequately and that we were withdrawing it but that sentence indicated that it was in-

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tended to apply to a situation in which cigarette commercials had been broadcast and then health hazard claims had been presented in opposition thereto. We pointed out that Yen's inquiry "assumes that cigarette companies have purchased time on a station to present their commercials." This clearly is not the situation we were discussing in Los Angeles. We went on in our letter to say that "a licensee who has carried cigarette commercials has extensively covered one side of the issue on behalf of the cigarette companies, so that when he presents a significant amount of time devoted to the other side ... he is under no obligation to present further materials on the first (pro-smoking) side requested by those companies or their spokesmen in your assumed case." Thus I think what we said to Kistromedia was that if a station has carried cigarette commercials and also presents public safety announcements stressing the hazards of smoking, the Fairness Doctrine does not require it to present similar spots defending smoking because that side of the argument has been implicitly presented in the commercials which gave rise to the obligation to carry the health warnings. Again, it seems clear to me that this is not the situation raised in Los Angeles.

However, our staff did address itself to that specific question in a letter to Larry Jonas of KEMC-FM in Eugene, Oregon. He advised us that he does not broadcast tobacco advertising but does carry warnings as to smoking and health. He said he had received a request for broadcast time to present the other side of the controversy, that is material proposed by proponents of smoking. We pointed out that we had held that there is a controversial issue of public importance involved here and went on to say:

"In such circumstances the licensee who carries only material devoted to the deleterious effect of smoking on health is under an obligation to affirmatively afford a reasonable opportunity for presentation of the other side."

We went on to remind him that the initial judgment as to the presentation of material regarding cigarettes is one for the licensee, but that if he presents one side of the issue, he may not prevent the presentation of opposing views on the ground he does not believe them to be in the public interest. Rather, the public is served by being given both sides so that it can make up its own mind about the matter.

I trust this will clarify the matter, and I can carry my recollection of the Dougherty letter was not clearer so that we could have disposed of the whole thing in Los Angeles.

Very truly yours,

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Kenneth A. Cox