

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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MAIL BRANCH

NOV 13 1989

mailed by

Mr. Robert E. Hardy
Director of Broadcasting
Station KAWC-AM
Arizona Western College
P.O. Box 929
Yuma, Arizona 85364

Dear Mr. Hardy:

This letter is in response to your written inquiry of September 15, 1989, requesting written confirmation of a telephone conversation you had with staff attorney Robert Somers on September 15, 1989. Your inquiry was as follows:

Question: Can a non-commercial radio station broadcast old time radio programs i.e., Jack Benny, Fibber McGee, The Shadow, etc., including the old commercials of the original broadcast of the program(s) (except cigarette commercials)?

Section 399B of the Communications Act (47 U.S.C. §399b) prohibits non-commercial stations from broadcasting advertisements which are defined as "...any message or other programming material which is broadcast or otherwise transmitted in exchange for any remuneration, and which is intended ...to promote any service, facility, or product offered by any person who is engaged in such offers for profit...." This statutory provision would not appear to apply to the situation you have described if your station is not receiving, directly or indirectly, remuneration in exchange for airing the advertisements. The advertisements in question are merely included in tapes of old radio programs. Any remuneration involved was previously paid to the stations which originally broadcast the programs. Accordingly, if your station is not receiving any remuneration for airing the tapes you seek to broadcast, the advertisements included in the programs may be broadcast.

One caveat, however, should be noted. The advertisement of cigarettes, little cigars, and most other tobacco products on radio or television is prohibited by 15 U.S.C. §1335 and §4402. The U.S. Department of Justice enforces this prohibition. For inquiries and declaratory rulings on this issue, you may wish to call Ron Lively or John Fleder of the Department of Justice at (202) 724-6786. It may be necessary to submit a written inquiry along with tapes or transcripts of the particular material in question to:

U.S. Department of Justice
Office of Consumer Litigation
Civil Division
Washington, D.C. 20530

I trust that the foregoing is responsive to your inquiry.

Sincerely,

Edythe Wise, Chief
Complaints and Investigations Branch
Enforcement Division
Mass Media Bureau