

the doctrine is actually embodied in the law, violations thereof would seem to be subject to fines on the same basis as other violations of the Act, even in the absence of an administrative rule on the subject.

The position of the FCC is that the doctrine is an integral part of the Communications Act:

[J]ust as there is a specific statutory obligation upon the licensee to afford "equal opportunities" to legally qualified candidates, so also there is one "to afford reasonable opportunity for the discussion of conflicting views on issues of public importance—to be fair in treating controversial issues."²⁸

It is not clear whether the Commission in its notice of July 5, 1967, quoted above, actually intended to take the position that violations of the Fairness Doctrine which do not come under the purview of its "personal attack" rules are immune from fine, although such seems to be a permissible inference from its above-quoted language.

II. SECTION 315 OF THE COMMUNICATIONS ACT OF 1934

The language of the Communications Act of 1934 which seems to refer to the Fairness Doctrine appears in section 315 which is entitled "Facilities for Candidates for Public Office." Subsection (a) thereof provides that any broadcaster who permits a legally qualified candidate to use his facilities must afford equal opportunities to all other such candidates for the same office. The subsection then goes on to exclude appearances by a candidate on certain news programs from being classified as a "use" of the station such as would entitle his opponents to equal time.

The subsection concludes as follows:

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 Act* to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance. [Emphasis supplied.]

The last two sentences in subsection 315(a) are still the subject of debate as to their effect and the legislative intent behind them. The language was added as part of the Communications Amendments of 1959.

The words "the obligation imposed upon them under this Act" seemingly contemplate some statutory provision located elsewhere in the Communications Act. No such specific provision exists, however. The words "reasonable opportunity for the discussion of conflicting views on issues of public importance," which seemingly paraphrase the Fairness Doctrine, are found nowhere else in the Communications Act.

The position of the Federal Communications Commission on the statutory mandate for the doctrine seems to be that the policy is a necessary corollary of the requirements in the Act that licensees operate in the "public interest convenience or necessity", and that radio is to be preserved as a medium of freedom of speech (see 1949 *Editorializing Report*). The enactment of the 1959 amendments is regarded by the FCC as a congressional ratification of the doctrine:

Congress recognized this policy [i.e., the Fairness Doctrine] in 1959. In amending section 315 so as to exempt appearances by legally qualified candidates on

²⁸ Letter to Hon. Oren Harris, 3 R.R. 2d 163, at 165 (1963).