



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 29, 1988

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1988-25

Robert P. Bauer
Perkins Coie
1110 Vermont Avenue N.W.
Washington, D.C. 20005

Dear Mr. Bauer:

This refers to your letter dated May 27, 1988 requesting an advisory opinion on behalf of General Motors Corporation ("GM") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the use of GM motor vehicles which would be loaned to the Democratic National Committee and the Republican National Committee ("the Committees") in connection with their 1988 presidential nominating conventions in Atlanta and New Orleans.

Your request indicates that the Committees have requested GM to make available a fleet of 250 automobiles for each national nominating convention to assist in providing "convention and host committee transportation services." GM proposes to provide these vehicles in accordance with promotional programs it has conducted for years in connection with many different "non-political conventions" and other major events.

The request includes a sample list of over 50 conventions, sport and special events and other convocations occurring in the past two years for which GM has assigned vehicles, without charge, for up to 30 days. GM selects each convention or event "in accordance with its evaluation of promotional value with relation to cost." In connection with these past events, GM retained ownership of the loaned vehicles and, after the loan period, it sold the vehicles to GM dealers at approximately the regular dealer price, less an allowance of five percent of the manufacturer's suggested retail price.

Your request describes GM's program as proposed for the 1988 national nominating conventions of the Committees.

GM would sell approximately 250 vehicles to participating dealers in each of the convention cities' metropolitan areas. The dealers would purchase the vehicles at the regular dealer price. In turn, the dealers would lend the vehicles to the Committees for use in connection with the conventions. Each Committee would receive an advance delivery of approximately twenty vehicles for use during the several weeks preceding the convention. The remaining vehicles would be available for use immediately before, during, and immediately after the conventions.

At the end of each convention, the vehicles would be returned to the dealers, who would dispose of them in a manner within the discretion of each dealer. GM would credit the dealers' accounts for the regular price of the vehicles and rebill the dealers for the regular price less an allowance of five percent of the manufacturer's suggested retail price of the base model. The allowance would assist the dealers in the disposition of the vehicles by covering the estimated loss of value attributable to the convention use. Vehicles that acquire over 3,000 miles would be provided an additional allowance of approximately five percent. The vehicles would also be eligible for any current incentives and liquidation allowances which GM offers on like model vehicles generally. GM would also pay the dealers an allowance intended to compensate them for the estimated fair equivalent of interest accrued on the value of the vehicles during the convention use. The maximum cost of all of the allowances to dealers by GM is estimated to be less than \$500,000.

The Committees would supply drivers for the vehicles, pay ordinary operating expenses such as gas, oil, and repairs not covered by the vehicles' warranties, and be responsible for any fines levied in connection with use. The Committees would take all actions required to license and register the vehicles and would pay all related expenses. The Committees would also procure and pay for any necessary insurance.

Unlike similar plans undertaken in connection with non-political conventions or special events, the proposed convention program would allow for local dealer ownership and control during the conventions, and for expedited service requirements and prompt local handling of any problems which may arise.

The Committees would establish a central depot for the vehicles in each convention city. GM would assign one GM employee to the vehicle depots to act as a liaison between the dealers and the

Committees. If a vehicle were to need repair, the vehicle's driver would notify the liaison, who would facilitate the repair.

The Committees would designate these General Motors products as "Official Vehicles" of the Presidential nominating conventions. GM and, after the conclusion of the period of use of the vehicles, the dealers, would be authorized to make reference to the Committees' use of the vehicles, and to display the names and the trademarks of the Committees in publicity and promotional materials. GM would be required to obtain approval from the Committees of the form and content of promotional materials.

The Act prohibits any contribution or expenditure by a corporation in connection with any election, including a political convention, held to select candidates for any Federal office. 2 U.S.C. 441b(a), 11 CFR 114.2(b). The term "election" includes a convention of a political party having authority to nominate a presidential candidate. 2 U.S.C. 431(1)(B), 11 CFR 100.2(a),(e). In addition, the term "contribution or expenditure" in this 441b context includes an loan (excluding qualified loans of money from banks or similar entities) or gift of anything of value to any political party in connection with any election to Federal office. 2 U.S.C. 441b(b)(2), 11 CFR 114.1(a)(1). The Act and Commission regulations set forth several exceptions to the foregoing general prohibition. See 2 U.S.C. 441b(b)(2)(A), (B) and (C), and 441b(b)(4)(B), (C) and (D). See also 11 CFR 114.1(a)(2).¹

Commission regulations provide that "anything of value" includes any goods or services including the use of "equipment" and any "means of transportation." 11 CFR 100.7(a)(1)(iii)(A), 114.9(e). A contribution in-kind occurs if equipment or transportation services are provided without charge, or at a charge less than the usual and normal charge. 11 CFR 100.7(a) (1)(iii)(A) and (B). In several advisory opinions, the Commission has applied the usual and normal charge principle in a variety of factual situations.

Most recently, the Commission concluded that a hotel corporation which offered discounted or complimentary rooms to customers who purchase a block of rooms at the appropriate rate may give that same consideration to candidates for Federal office who reserve enough rooms to qualify under the same terms and conditions applicable to other non-political customers. Advisory Opinion 1987-24. Other opinions have similarly allowed corporations to give volume discounts or rebates to candidates for Federal office who purchase the corporate vendors' services or goods if those discounts or rebates are offered in the ordinary course of the corporation's business to non-political customers or clients, and if offered on the same terms and conditions to the candidate or political committee. Advisory Opinions 1986-22, 1985-281 1982-30, and 1976-86.

Applying the usual and normal charge standard to a corporations offer of a reduced billboard advertising rate to a Federal candidate's campaign committee, the Commission concluded in Advisory Opinion 1978-45 that the discounted rate would represent a prohibited corporate contribution. The Commission reasoned that because this rate was not routinely offered in the ordinary course of business to the corporation's commercial customers, it could not be offered to

the Federal candidate.² The Commission reached this conclusion notwithstanding that the corporation had made a "practice" of giving reduced advertising rates "for civic and political purposes."

The foregoing line of opinions affirms the Commission's long standing policy that corporate vendors may sell, and Federal candidates (and their campaign committees) may purchase, goods and services at "usual and normal charge" which charge may reflect discounts or rebates based on business volume, provided the corporation in its ordinary course of business has given the same reductions to non-political customers or clients in the same circumstances. These opinions do not establish the rule that valuable goods or services may be given without any charge to, or payment by, a Federal candidate or political committee. In addition, the claim that the corporate vendor would receive promotional value from the candidate's acceptance and use of the free services or goods does not mean that a prohibited corporate contribution has been avoided.

In Advisory Opinion 1986-30 the Commission concluded that Federal candidates could not obtain the free use of a houseboat, owned by the corporate manufacturer, for a campaign tour through lakes and waterways in their congressional districts, even though the corporation offered the houseboat without charge in order to promote commercial sales during the tour. Consistent with this underlying rationale, the Commission earlier concluded that a candidate who spent personal funds to lease an electric vehicle from a corporation, in part for personal use but also for use as a demonstration vehicle at certain public appearances and for other campaign purposes, had to make a reasonable allocation of the lease costs as a contribution under the Act. Advisory Opinion 1978-48. Furthermore, in Advisory Opinion 1988-12 the Commission recently indicated that the value of an endorsement by political party officials that would assist in the bank's commercial promotion of its credit cards to party members would not validate payments by the bank as consideration for a contractual relationship with the political party. Instead the proposed payments were viewed as prohibited contributions by the bank (also a corporation).

As the foregoing discussion indicates, the Commission's prior opinions applying the Act and regulations to corporate vendors engaged in sale/purchase transactions with candidates and political committees do not represent an exception to the rule that usual and normal charges must be paid to a corporation who offers goods or services to a candidate for Federal office, a political committee, or a political party organization in connection with a Federal election. Only if the circumstances raised by your request warrant an exception such as found in Commission regulations dealing with presidential nominating conventions, would the prohibition of 2 U.S.C. 441b not apply.

As you know, the Presidential Election Campaign Fund Act ("the Fund Act") provides for payments from the Treasury of the United States to the national committees of major political parties to defray expenses incurred with respect to their presidential nominating conventions. 26 U.S.C. 9008(b)(1). Qualified convention expenses are also limited by the Fund Act. 26 U.S.C. 9008(d). Commission regulations implement the Fund Act in several respects. See generally 11 CFR Part 9008.

The regulations provide specifically that expenses of the national committees, or their convention committees, to provide a transportation system in the convention city for use by

delegates and others attending the convention are qualified convention expenses. 11 CFR 9008.6(a)(4)(vii). The regulations also provide that expenditures of governmental agencies and municipal corporations may be made for transportation services, including the provision of automobiles, with respect to a presidential nominating convention and that such expenditures are not contributions to or expenditures by the national committees. 11 CFR 9008.7(b)(1) and (b)(2)(ii).

Another related regulation permits the discounted sale or lease of products or services by retail businesses to the national committees with respect to their presidential nominating conventions. 11 CFR 9008.7(c)(1)(i). This regulation requires that the discount (or reduction) in price be given in the ordinary course of business. Such discounts or reductions also do not count toward the convention expenditure limitation of the national party. 11 CFR 9008.7(c)(1)(ii).

Local retail businesses may donate funds (or services) to a host committee for its use in defraying convention expenses such as transportation services. 11 CFR 9008.7(d)(3)(i). The amount of such donation must be proportionate to the commercial return reasonably expected by the business during the life of the convention. 11 CFR 9008.7(d)(3)(ii).

The activities permitted by the foregoing regulations represent narrow and specific exceptions to the prohibitions of 2 U.S.C. 441b in the context of the convention expenditure limit of 26 U.S.C. 9008(d). The Commission's Explanation and Justification for these regulations states, with respect to retail business discounts allowed under 11 CFR 9008.7(c)(1), that "normal discounts" are permitted but that "to prevent illegal contributions" the discounts must be "in the ordinary course of business. In enforcing this standard, the Commission would examine whether such discounts were in accordance with standard practice based on the quantity of similar goods or services sold or provided in similar transactions." 44 Fed. Reg. 63036, 63037(1979) (1 Fed. Election Camp. Fin. Guide (CCH) ¶1313, at pages 1713-1715); see Advisory Opinion 1975-1 (allowing convention transportation services such as lease of automobiles, but only if not provided at less than their fair market value; also allowing reductions in charges in return for purchases of a certain minimum quantity of whatever services or products the corporation deals in if the reductions are offered in the ordinary course of business to others); accord Advisory Opinions 1983-29 and 1982-27 (convention cities allowed to establish and control convention promotion funds comprised of donations from corporations that would be spent to purchase services for party nominating conventions from commercial vendors, but not at less than fair market value).

This GM vehicle loan program represents activity in the ordinary course of business for GM in view of its established two year program of loaning, without charge, fleets of GM vehicles to various conventions, conferences, sporting events and other special events for GM's promotional purposes. GM will benefit from the increased retail car sales through its local dealers, and its proposal to loan 500 vehicles to the Committees without any charge is virtually the same as its two year past practice. In this instance GM proposes to collaborate with its retail dealers in the convention cities to promote their vehicles to convention delegates and attendees through the "Official Vehicles" designation and by means of a GM dealer allowance program. GM dealers will purchase the vehicles and loan them to the Committees with return to, and sale by, the

dealers after the conventions. The dealers will not pay any operating expenses for the vehicles, or provide drivers, while the cars are in use by the Committees.

The Commission concludes that under the circumstances you present, GM would be permitted to execute its vehicle loan program. Although the program does not fall within the specific exemptions delineated in the national nominating convention regulations, the Commission nevertheless, concludes that the GM program of providing cars without charge falls within the parameters of the kind of activity sanctioned by those regulations. This conclusion is predicated on several factors, most of which would be evident in qualifying under the specific exemptions, such as: the established practice of GM regarding other non-political events; the assumption that the value provided is proportionate to the value provided in similar situations; the obvious commercial benefit that underlies the program; the assumption that such commercial benefit is not outweighed by the value provided; and most important, the unique promotional versus political opportunities that a national nominating convention presents.³

The Commission further concludes that GM's vehicle loan program may be arranged through the convention committee or the host committee. Because the value of the program would not be considered a "contribution" for purposes of 2 U.S.C. 441b, the Commission further concludes that the value provided to either a convention committee or host committee need not be reported as an "in-kind contribution," "receipt" or "other income." See 11 CFR 9008.1(b) and 9008.12(a)(2), (b); FEC Form 4, Report of Receipts and Disbursements for a Committee or Organization Supporting a Nominating Convention. Nonetheless, because of the need to assure that the vehicle loan program stays within permissible bounds, and because of the Commission's need to conduct an audit of the convention and host committees, all records pertaining to the vehicle loan program, including contracts or related correspondence or other documentation that would relate to the above-cited factors underlying the Commission's conclusion, must be retained and furnished to Commission auditors. See 11 CFR 9008.8(b), (4)(vi), (vii) and 9008.9.

This response constitutes an advisory opinion concerning application of the Act or regulations prescribed by the Commission to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

Thomas J. Josefiak
Chairman for the Federal Election Commission

Enclosures (1988-12), 1987-27, 1987-24, 1987-8, 1986-30, 1986-22, 1985-28, 1983-29, 1982-27, 1980-53, 1980-21, 1978-48, 1978-45, and 1975-1)

1/ The only exception in Commission regulations relevant to this request allows corporations to finance certain specific activities with respect to presidential nominating conventions. 11 CFR

114.1(a)(2)(vii) citing 11 CFR 9008.7. The application of the convention regulations is discussed below.

2/ This line of reasoning is both consistent with and reflected in Advisory Opinion 1987-27 where a vendor corporation charged tariff-set amounts to presidential campaigns for local exchange and exchange access telephone services. The opinion concluded that, given the circumstances there presented, the designation of corporate employees to manage the telephone service accounts of presidential campaigns under contract to the corporation was permitted without additional charge because those services were normally provided to other high volume customers as part of its regular services package.

3/ The Commission also discussed the apparent non-partisan nature of GM's proposal.