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July 12, 1991

Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Advisory Opinion Request

Dear Sir/Madame:

AOR 1991-23

91 JUL 12 PM 12:38

On behalf of the National Association of Retail Druggists ("NARD"), we request your advice concerning the following fact situation. NARD will hold a reception for its political action committee, NARDPAC, at its annual meeting on October 30, 1991. NARD has learned that an American distributor of a foreign automobile company is willing to donate a foreign automobile which NARDPAC would utilize as the prize at a raffle to raise funds for itself. The raffle, of course, is subject to the Commission's rules concerning raffles and to applicable state law. 11 C.F.R. § 114.5(b)(2).

NARD has absolutely no connection to this foreign automobile company or its American distributor. NARD is a trade association of retail druggists, and it has no connection of any sort with the automobile business or these companies. It is NARD's understanding that the American distributor donates automobiles to business groups in political and non-political situations as part of its advertising and marketing program because it believes that individuals who belong to NARD or other similar business groups might be potential customers for its automobiles. NARD has approached the American distributor and that company is willing to donate the car if it complies with the Commission's rules.

In reviewing the rules and applicable advisory opinions, we have noted a number of questions. In A.O. 1986-13, CCH Fed. Elec. Camp. Fin. Guide § 5854, the Commission raised but did not answer the question of whether a non-member of an

Federal Election Commission
July 12, 1991
Page 2

association could donate a prize especially when that non-member was a foreign national. A similar question with regard to non-members was raised in A.O. 1989-18, CCH Fed. Elec. Camp. Fin. Guide ¶ 5968. In the latter opinion, the Commission ruled that individuals employed or connected with member corporations could donate time at their vacation homes but could not be solicited for this purpose. Our fact situation, however, seems distinguishable because the foreign automobile company and its American distributor have no connection with NARD, and the distributor is engaged in a normal advertising or marketing expense. It would seem, therefore, that the donation of the automobile is not a contribution within the meaning of the Federal Election Campaign Act. See e.g. A.O. 1987-24, CCH Fed. Elec. Camp. Fin. Guide ¶ 5902.

Another question raised by these facts is whether this donation is prohibited because it comes ultimately from a foreign national. The Commission's regulations state that "a foreign national shall not directly or through another person make a contribution . . ." 11 C.F.R. § 110.4(a). There is no doubt that the foreign automobile company is a foreign national within the meaning of the Commission's rules. However, the American distributor is not, and it is our understanding that the automobile to be donated is owned by the American distributor, not the foreign automobile company. Moreover, if the Commission concludes that a donation as part of a normal advertising and marketing program is not a "contribution," then even if the Commission concluded that this rule did apply, it would not prohibit the donation.

The last question is how the one-third rule applicable to raffles would apply to this automobile. 11 C.F.R. § 114.5(b)(2). The regulation requires the PAC to reimburse NARD "for costs which exceed one-third of the money contributed." In this case, NARD incurs no cost in connection with the donated automobile. It would seem, therefore, that the rule would not apply.

We would appreciate your response to these questions. If you require any additional information, please do not hesitate to contact me.

Very truly yours,



Michael A. Nemeroff