



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

August 19, 1991

CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1991-23

Michael A. Nemeroff  
Sidley & Austin  
1722 Eye Street N.W.  
Washington, D.C. 20006

Dear Mr. Nemeroff:

This responds to your letter dated July 12, 1991, requesting an advisory opinion on behalf of the National Association of Retail Druggists ("NARD") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to a proposed donation of a prize for a fundraising raffle conducted by NARD for the National Association of Retail Druggists Political Action Committee ("NARDPAC"), NARD's separate segregated fund.

You state that at its annual meeting on October 30, 1991, NARDPAC plans to hold a raffle to raise funds for its own uses. The prize for the fundraiser would be a foreign car that an American distributor of a foreign automobile company is willing to donate. NARD, which you state is a trade association of retail druggists, has no connection with either the American distributor or its foreign parent company. It is your understanding that the American distributor donates automobiles to business groups in political and nonpolitical situations alike for promotional purposes. The Commission understands that the American distributor is a corporation.

You ask the following questions regarding the proposed donation: (1) because of the promotional aspect of the donations, does the gift of the car fall outside the definition of contribution under the Act; (2) does the 11 CFR 110.4(a) prohibition against contributions from foreign nationals apply to this situation; and (3) how would the one-third rule found at 11 CFR 114.5(b)(2) operate in this case.

The Act prohibits corporations from making any contribution or expenditure in connection with a Federal election. 2 U.S.C. 441b(a). This prohibition includes in-kind contributions, which are

defined to include gifts of goods or services at less than their normal and usual charge. 2 U.S.C. 431(8)(A)(i). The Act states, however, that the term "contribution or expenditure" does not include "the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation, labor organization, membership organization, cooperative or corporation without capital stock." 2 U.S.C. 441b(b)(2)(C). See also 2 U.S.C. 431(8)(B)(vi) and (9)(B)(v). Corporate members of an incorporated trade association who meet the definition of "membership" under the Act and regulations may contribute funds or merchandise to defray solicitation expenses of the trade association's separate segregated fund. See Advisory Opinions 1989-18, 1986-13 and 1982-36.

Commission regulations at 11 CFR 114.5(b)(2) specifically permit a corporation to use a raffle as a method of raising funds for a separate segregated fund. Furthermore, the Commission has previously determined that corporate members of a trade association may donate raffle prizes. See Advisory Opinions 1989-18 and 1986-13. However, the solicitations for these donations as well as the acceptable sources for the donations are subject to the limitations and prohibitions of Section 441b and Part 114 of Commission regulations. See Advisory Opinions 1989-18 and 1983-24. For example, in Advisory Opinion 1989-18 the Commission concluded that the separate segregated fund of a trade association could accept, as raffle prizes, the use of vacation homes contributed by individual non-corporate donors who did not belong to the association. The Commission, citing 11 CFR 114.5(j), concluded that an unsolicited in-kind contribution to the separate segregated fund would be permissible as long as it complied with the contribution limits and was not otherwise prohibited under the Act. The Commission, however, cautioned that these non-members could not be solicited for the contribution since they were outside the solicitable restricted class. In Advisory Opinion 1983-24, the Commission determined that a trade association could not accept from certain corporate vendors donations to defray related fundraising costs because those donors were not members of the association.

Therefore, in answer to your first question, the Commission concludes that the gift is prohibited by 2 U.S.C. 441b since the donor of the car is a corporation and is not a member of NARD.

This conclusion is not affected by the promotional aspects of the donation. The Commission has previously determined that the asserted promotional value to a corporate vendor from the acceptance and use of free services or goods by a candidate or committee does not mean that a prohibited corporate contribution has been avoided. See Advisory Opinions 1988-25, 1988-12, 1986-30 and 1987-24. For example, 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 even though the house boat was offered free of charge to promote commercial sales in the candidates' campaign districts. The only exceptions where such claims were accepted have been in the narrow circumstances allowed under Commission regulations applicable to national nomination conventions and where certain general promotional amenities, discounts, and rebates were offered within a pre-existing business relationship.<sup>1</sup>

Having concluded that the proposed gift is prohibited by the Act, the Commission need not reach the other questions presented in your request concerning the application of 11 CFR 110.4(a) and 114.5(b)(2).

This response constitutes an advisory opinion concerning the 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,

(signed)

John Warren McGarry  
Chairman for the Federal Election Commission

Enclosures (AOs 1989-18, 1988-25, 1988-12, 1987-24, 1986-30, 1986-13, 1983-24 and 1982-36)

1/ In Advisory Opinion 1988-25, the Commission concluded that an automobile manufacturer could provide cars without charge for national political parties for use at their Presidential nominating conventions. The Commission found that this fell within the parameters of the type of activity sanctioned by the regulations governing presidential nominating conventions. In Advisory Opinion 1987-24, the Commission determined that Hyatt corporation could provide the same goods and services offered nonpolitical clients, to its political clients as well. These services consisted of flowers, food, free rooms and other "complimentary items" given to all types of clients who reserved large blocks of rooms.