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January 10, 1992

BY HAND

Lawrence M. Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Dear Mr. Noble:

AOR 1992-3

The purpose of this letter is to request an advisory opinion pursuant to Section 437f of Title 2 of the U.S. Code on behalf of the Reynolds Metals Company (the "Company") with respect to the matters set forth below.

An employee of the Company is a member of the Virginia state legislature and has served in that body for the past six years. In accordance with a longstanding Company policy on leaves for employees holding paid elective office, and as has been the case for each of the past six years, the employee plans to take an unpaid leave of absence for the duration of the legislative session (mid-January to early March), during which period the employee will not receive her salary but will receive full benefits (life insurance, health insurance, etc.). We understand that this employee also is actively considering running for Congress. It is anticipated that the employee, if she decides to do so, will declare her candidacy and engage in campaign activities on personal time during the period of her leave for legislative service. Upon the conclusion of the legislative session, the employee's legislative leave will terminate. We anticipate that the employee will then seek further unpaid leave (in addition to any compensable earned leave that she may have accrued) in order to pursue her candidacy.

In addition to the policy regarding leaves of absence for employees holding paid elective office, the Company has a general policy applicable to leaves of absence for other reasons. The latter policy, which is published in the Company's Employee Handbook, states as follows:

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"Leave of Absence

"During an approved leave of absence, your medical, dental, vision and life coverages continue for 31 days after your last day at work, provided you continue making any premium payments for voluntary life and AD&D insurance. Sickness and accident, workers' compensation supplement and long term disability coverages stop as of your last day on the job."

This policy has been in place since at least 1988. Leaves of absence have been granted for a variety of reasons, because it is recognized that doing so fosters the ability of the Company to retain good employees. It would be the intention of the Company, based upon its prior practice and its employment relationship with this particular employee, to grant the employee's request for a leave of absence with up to 31 days of benefits should she wish to take unpaid leave to pursue her campaign following her leave for service in the state legislature. The Company's determination to do so here would be made, as it would be in the case of any similarly situated employee, without regard to partisan political concerns.

The Company does not believe that any aspect of the situation described above would contravene any provision of the Federal Election Campaign Act (the "Act") or related regulations, including in particular those provisions that prohibit the making of corporate "contributions." Specifically, the Company does not believe that the continuation of benefits to the employee-candidate at the Company's cost for up to the first 31 days of a leave of absence pursuant to the above-quoted policy would be prohibited by the Act or related regulations.

The Act states that "[t]he term 'contribution' includes . . . the payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose." 2 U.S.C. § 431(8)(A)(ii). The Act makes clear, however, that the term "contribution" does not include "the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee." 2 U.S.C. § 431(8)(B)(i). Here, there should be no "contribution" because the services the employee renders to her campaign would be uncompensated. The continued benefits during any unpaid leave would be attributable not to those

services but rather to the candidate's previous active employment with the Company.

The regulations also recognize that an employee may receive previously-earned benefits during a period of involvement in a political campaign. They state that "[n]o contribution results where the time used by the employee to engage in political activity is bona fide, although compensable, vacation time or other earned leave time." 11 C.F.R. § 100.7(a)(3)(iii). The rationale for this provision would appear to be that compensation paid during a period of political activity but earned previously is not attributable to the political activity and hence is not a "contribution." Similarly, benefits paid during a period of political activity but attributable to prior active employment in accordance with a pre-existing policy, as here, should not be a contribution. Thus, the continuation of benefits is within both the letter and the spirit of the Act and related regulations.

We are seeking an advisory opinion because of a further provision of the regulations which states that "[a] corporation . . . may not pay the employer's share of the cost of fringe benefits, such as health and life insurance and retirement, for employees . . . on leave-without-pay to participate in political campaigns of Federal candidates." 11 C.F.R. § 114.12(c)(1). We believe that this provision is limited to the narrow circumstance where an employer proposes to continue benefits on an ad hoc and voluntary basis, rather than pursuant to a pre-existing policy. In such a case, the benefits would be fairly attributable to the campaign activity. Here, the benefits would be attributable to prior active employment -- just as salary paid during bona fide vacation time is attributable to prior active employment.

The Commission recognized this distinction in an early advisory opinion. There, the Commission considered whether an employee-candidate could continue to receive compensation and benefits following the inception of the employee's candidacy. The Commission cited the current formulation of Section 114.12(c)(1) of the regulations in holding that:

"[a]s for . . . incidental benefits such as life and hospitalization insurance, absent a bona fide policy for employees on leave without pay, . . . the amount of the premiums paid for the insurance after the employee becomes a candidate and after he terminates his service for the

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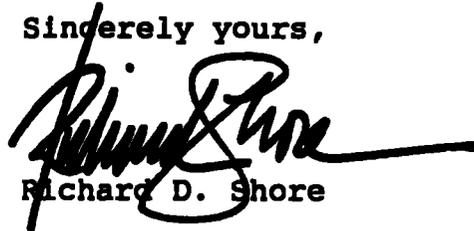
corporation[] will be considered a contribution."

Advisory Opinion 1976-70 (emphasis added; existing emphasis omitted). Here, by way of contrast, a "bona fide policy for employees on leave without pay" does exist.

In light of this opinion and the foregoing analysis, we request that the Commission confirm that the Company may, pursuant to the Act and related regulations, continue the benefits of an employee-candidate on an unpaid leave of absence in accordance with the Company's pre-existing policy and under the circumstances described above. Given the time frame within which the employee must decide her candidacy, we would ask that the Commission consider this request on an expedited basis.

With thanks for your kind attention to this request,

Sincerely yours,

A handwritten signature in black ink, appearing to read "Richard D. Shore", with a stylized flourish extending to the right.

Richard D. Shore