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ROBERT F. BAUER
(202) 434-1682

April 23, 1996

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

N. Bradley Litchfield, Esq.
Associate General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Dear Mr. Litchfield:

General Motors Corporation ("GM") respectfully requests an Advisory Opinion from the Commission on the application of the Federal Election Campaign Act ("FECA" or the "Act") to GM's proposed loan of cars to the two major parties for use at and in support of their national nominating conventions.

Under the program, GM and participating dealers enter into a Loan of Vehicle Agreement with the Democratic and Republican Convention Committees (the "Committees"). This Agreement sets out the terms and conditions of the proposed car loans. It provides for GM to loan cars to the Committees for use in connection with their conventions, in return for which GM and its dealers may advertise GM cars as "Official Vehicles of the 1996 Democratic National Convention" or "Official Vehicles of the 1996 Republican National Convention." GM is also entitled under the Agreement to space at each convention for the display of three of its cars and to appropriate accommodations for representatives of the company involved in the administration of the program and representation of GM at the conventions. The obligations of the Committees under the Agreement include use of the vehicles only for purposes connected to the Convention; operation of the vehicles by licensed drivers operating the vehicle in accordance with agreed standards; and proper maintenance, repair and licensing of the vehicles.

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GM proposes to purchase the vehicles needed for the program from participating dealers, and to loan them directly to the Committees for use as specified under the Agreement. Following conclusion of the Agreement and return of the vehicles by the Committees, GM will resell the vehicles to the dealers with credit toward the purchase price for the period of Convention use. The credit will vary with the amount of use, depending upon whether the mileage accrued during the Convention was below 1,000, between 1,000 and 2,500 or over 2,500.

In 1988, the Commission issued an Opinion approving, as consistent with the Act, a similar program implemented for both the 1988 and 1992 Conventions. See Advisory Opinion 1988-25, 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 5931 (June 29, 1988). The proposed 1996 program features the difference that GM seeks to make a direct loan of the cars to the Committees, rather than through local dealerships. This change reflects the additional flexibility involved for GM in arranging, under relevant state law, for manufacturer, rather than local dealer, license plates for the cars. The additional cost to the Corporation of processing the plating of these cars would be charged to and paid by the convention committees.

In all other respects, the purpose and terms of the 1996 plan is identical to those of its predecessor programs, and the factors cited by the Commission in its 1988 Opinion in approving those programs are present here. Specifically, the plan for 1996 is consistent with the established practice of GM regarding other non-political events; the value provided is proportionate to the value provided in similar situations; an "obvious commercial benefit" motivates the program; and the commercial benefit is not outweighed by the value provided. The Commission also noted in 1988, as is true also for this year's program, that the proposal is nonpartisan in nature and its benefits would be offered equally to both major political parties on identical terms and conditions.

Since 1988, moreover, the Commission promulgated new regulations to specifically address the provision of goods and services to the convention committees by "commercial vendors" without charge, or at discount, if made in the ordinary course of business and for promotional purposes. 11 C.F.R. § 9008.9. These new rules, which include a provision concerned with "items provided for promotional

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consideration," appear to govern the application of the Act to the proposed GM program.¹

The history behind the new rules shows that the Commission specifically considered the 1988 GM car loan program, and Advisory Opinion 1988-25 issued in support of it, and affirmatively acted to assure that national companies like GM and other commercial vendors could, in the future, offer free or discounted goods or services in return for promotional advantages.² The rules made other adjustments in the rule articulated in AO 1988-25, such as by providing that all commercial vendors

¹ The text of the relevant rule reads, in pertinent part, as follows:

(b) Items provided for promotional consideration.

(1) A commercial vendor may provide goods or services in exchange for promotional consideration provided that doing so is in the ordinary course of business.

(2) The provision of goods or services shall be considered in the ordinary course of business under this paragraph:

(i) If the commercial vendor has an established practice of providing goods or services on a similar scale and on similar terms to non-political clients, or

(ii) If the terms and conditions under which the goods or services are provided are consistent with established practice in the commercial vendor's trade or industry in similar circumstances.

(3) In all cases, the value of the goods or services provided shall not exceed the commercial benefit reasonably expected to be derived from the unique promotional opportunity presented by the national nominating convention.

² In fact, the new regulations use as one of its examples, in showing how promotional benefits are to be reported by the convention committees, the loan of cars by "Generic Motor Co., Detroit, Michigan." 11 C.F.R. § 9008.9(b)(4).

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and not only local or retail businesses may offer discounted or free goods or services under the rule. 59 Fed. Reg. 33611 (June 29, 1994).

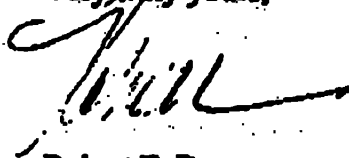
Under the new rules, the "ordinary course of business is defined to include "an established practice of providing goods or services on a similar scale and on similar terms to non-political clients." 11 C.F.R. § 9008.9(b)(1)(i). The rule also requires that the value of the goods or services provided "shall not exceed the commercial benefit reasonably expected to be derived from the unique promotional opportunity presented by the national nominating convention." 11 C.F.R. § 9008.9(b)(3).

The purposes and design of the GM program would appear to satisfy the requirements of the new rules. GM has consistently acted on promotional opportunities presented by non-political conventions, conferences, sporting and other special events.

The agreement GM is fashioning with the Committees will confer "Official Vehicle" designation on GM cars and permit use of this designation by GM or its local dealers in advertising. The Agreement also provides for suitable display space for three GM automobiles at the convention site. The commercial benefit GM reasonably expects to derive from the promotion is proportionate to the value of the car loan program made available to the Committees. Moreover, the approach of GM, and its expectation of the gain in promotional terms from this program, is fully consistent with its approach and expected gain in promotional loans it has made in non-political contexts.

GM respectfully requests the Commission's favorable consideration of this request for an Advisory Opinion approving the proposed loan of cars to the two major Party Nominating Conventions.

Very truly yours,



Robert F. Bauer
Counsel to General Motors Corporation