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FEDERAL ELECTION COMMISSION

Washington, DC 20463

**AGENDA ITEM**  
For Meeting of: MAY 23 1996

May 14, 1996

**MEMORANDUM**

TO: The Commission

THROUGH: John C. Surina  
Staff Director

FROM: Lawrence M. Noble  
General Counsel

N. Bradley Litchfield  
Associate General Counsel

Rita Reimer  
Staff Attorney

SUBJECT: Draft AO 1996-17

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for May 23, 1996.

Attachment

# DRAFT

1 ADVISORY OPINION 1996-17

2  
3 Robert F. Bauer  
4 Perkins Coie  
5 607 Fourteenth Street, N.W.  
6 Washington, D.C. 20005-2011  
7

8 Dear Mr. Bauer:

9 This responds to your letter dated April 23, 1996, requesting an advisory opinion  
10 on behalf of General Motors Corporation ("GM") concerning the application of the  
11 Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission  
12 regulations to GM's proposed loan of cars to the two major political parties for use at  
13 their 1996 national nominating conventions.

14 You state that, under this program, GM and participating GM dealers would enter  
15 into a Loan of Vehicle Agreement with the Democratic and Republican Convention  
16 Committees ("the Committees"). This agreement sets out the terms and conditions of the  
17 proposed car loans. It would provide for GM to loan cars to the Committees for use in  
18 connection with their conventions, in return for which GM and its dealers could advertise  
19 GM cars as "Official Vehicles of the 1996 Democratic National Convention" or "Official  
20 Vehicles of the 1996 Republican National Convention." GM would also be entitled to  
21 space at each convention for the display of three of its cars and to appropriate  
22 accommodations for representatives of the company who administer the program and  
23 represent GM at the conventions. The obligations of the Committees under the  
24 Agreement would include use of the vehicles only for purposes connected to the  
25 Convention: operation of the vehicle by licensed drivers operating the vehicle in  
26 accordance with agreed upon standards; and proper maintenance, repair and licensing of  
27 the vehicles.

1 GM proposes to purchase the vehicles needed for the program from participating  
2 dealers, and to loan them directly to the Committees for use as specified under the  
3 Agreement. GM would arrange license plates for the cars, and charge the cost of  
4 processing the plates to the Committees. Following conclusion of the Agreement and  
5 return of the vehicles by the Committees, GM will resell the vehicles to the dealers with  
6 credit toward the purchase price for the period of Convention use. The credit will vary  
7 with the amount of use.

8 You state that this plan is consistent with the established practice of GM  
9 regarding other non-political events: the value provided is proportionate to the value  
10 provided in similar situations; an obvious commercial benefit motivates the program; and  
11 the commercial benefit is not outweighed by the value provided. The proposal is  
12 "nonpartisan" in nature and its benefits would be offered equally to both major political  
13 parties on identical terms and conditions.

14 The Act prohibits any contribution or expenditure by a corporation in connection  
15 with any election, including a political convention, held to select candidates for any  
16 Federal office. 2 U.S.C. §441b(a), 11 CFR 114.2(b). The term "election" includes a  
17 convention of a political party having authority to nominate a presidential candidate.  
18 2 U.S.C. §431(1)(B), 11 CFR 100.2(a) and (e). In addition, the term "contribution or  
19 expenditure" in this context includes any loan (excluding qualified loans of money from  
20 banks or similar entities) or gift of anything of value to any political party in connection  
21 with any election to Federal office. 2 U.S.C. §441b(b)(2), 11 CFR 114.1(a)(1).  
22 Commission regulations provide that "anything of value" means any goods or services,  
23 including the use of "equipment." 11 CFR 100.7(a)(1)(iii)(A). An in-kind contribution

1 occurs if the use of equipment is provided without charge, or at a charge less than the  
2 usual and normal charge. 11 CFR 100.7(a)(1)(iii)(A) and (B).

3         However, the Act and Commission regulations set forth exceptions to the  
4 foregoing general prohibitions. Of particular relevance to your situation, Commission  
5 regulations at 11 CFR 9008.9(b) state that a commercial vendor may provide goods in  
6 exchange for promotional consideration to a national committee with respect to a  
7 presidential nominating convention provided that doing so is in the ordinary course of  
8 business. The provision of goods is considered in the ordinary course of business if the  
9 commercial vendor has an established practice of providing goods on a similar scale and  
10 on similar terms to non-political clients, or if the terms and conditions under which the  
11 goods are provided are consistent with established practice in the commercial vendor's  
12 trade or industry in similar circumstances. In all cases, the value of the goods provided  
13 may not exceed the commercial benefit reasonably expected to be derived from the  
14 unique promotional opportunity presented by the national nominating convention.

15         In Advisory Opinion 1988-25, the Commission approved a similar arrangement  
16 with regard to the 1988 national nominating conventions. However, that opinion was  
17 limited to the situation in which the manufacturer sold the cars to local dealers who, in  
18 turn, made them available on loan to the conventions. Its conclusion was based, in part,  
19 on earlier advisory opinions that applied the "usual and normal charge" principle in  
20 allowing volume discounts for hotel rooms, commercial airtime, discount coupon books,  
21 and other goods and services. See Advisory Opinions 1986-22, 1985-28, 1982-30, and  
22 1976-86.

1           The Commission subsequently reviewed and revised its convention rules in 1994.  
2    See 11 CFR 9008.9(b) and 59 *Fed. Reg.* 33616 (June 29, 1994). As part of this review,  
3    the Commission considered the special circumstances of the national nominating  
4    conventions and affirmed that, if done in the ordinary course of business, providing free  
5    goods or services in return for promotional value would not be a contribution. The  
6    revised rules cite, as an example of authorized activity, the loan of automobiles to  
7    convention committees 11 CFR 9008.9(b)(4). In addition, the Commission specifically  
8    expanded the result in Advisory Opinion 1988-25 to cover all commercial vendors,  
9    including manufacturers, not just the local and retail businesses that were the focus of  
10   that opinion. See 59 *Fed. Reg.* 33611. Accordingly, the Commission concludes that,  
11   under the circumstances you present, GM would be permitted to execute its vehicle loan  
12   program with the two major political parties pursuant to 11 CFR 9008.9(b).

13           The Commission notes that the Committees are required to maintain, for future  
14   Commission audits, the documentation set forth at 11 CFR 9008.9(b)(4). That paragraph  
15   also explains how these transactions are to be reported by the Committees to the  
16   Commission.

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