



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 23, 1996

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1996-17

Robert F. Bauer
Perkins Coie
607 Fourteenth Street, N.W.
Washington, D.C. 20005-2011

Dear Mr. Bauer:

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

You state that, under this program, GM and participating GM dealers would 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 would provide for GM to loan cars to the Committees for use in connection with their conventions, in return for which GM and its dealers could advertise GM cars as "Official Vehicles of the 1996 Democratic National Convention" or "Official Vehicles of the 1996 Republican National Convention." GM would also be entitled to space at each convention for the display of three of its cars and to appropriate accommodations for representatives of the company who administer the program and represent GM at the conventions. The obligations of the Committees under the Agreement would include use of the vehicles only for purposes connected to the Convention; operation of the vehicle by licensed drivers operating the vehicle in accordance with agreed upon standards; and proper maintenance, repair and licensing of the vehicles.

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. GM would

arrange license plates for the cars, and charge the cost of processing the plates to the Committees. 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.

You state that this plan 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 proposal is "nonpartisan" in nature and its benefits would be offered equally to both major political parties on identical terms and conditions.

The Act prohibits any contribution or expenditure by a corporation in connection with any election, including a political convention, held to select candidates for any Federal office. 2 U.S.C. 441b(a), 11 CFR 114.2(b). The term "election" includes a convention of a political party having authority to nominate a presidential candidate. 2 U.S.C. 431(1)(B), 11 CFR 100.2(a) and (e). In addition, the term "contribution or expenditure" in this context includes any loan (excluding qualified loans of money from banks or similar entities) or gift of anything of value to any political party in connection with any election to Federal office. 2 U.S.C. 441b(b)(2), 11 CFR 114.1(a)(1). Commission regulations provide that "anything of value" means any goods or services, including the use of "equipment." 11 CFR 100.7(a)(1)(iii)(A). An in-kind contribution occurs if the use of equipment is provided without charge, or at a charge less than the usual and normal charge. 11 CFR 100.7(a)(1)(iii)(A) and (B).

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

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

The Commission subsequently reviewed and revised its convention rules in 1994. See 11 CFR 9008.9(b) and 59 *Fed. Reg.* 33616 (June 29, 1994). As part of this review, the Commission considered the special circumstances of the national nominating conventions and affirmed that, if

done in the ordinary course of business, providing free goods or services in return for promotional value would not be a contribution. The revised rules cite, as an example of authorized activity, the loan of automobiles to convention committees. 11 CFR 9008.9(b)(4). In addition, the Commission specifically expanded the result in Advisory Opinion 1988-25 to cover all commercial vendors, including manufacturers, not just the local and retail businesses that were the focus of that opinion. See 59 *Fed. Reg.* 33611. Accordingly, the Commission concludes that, under the circumstances you present, GM would be permitted to execute its vehicle loan program with the two major political parties pursuant to 11 CFR 9008.9(b).

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

This response constitutes an advisory opinion concerning 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)

Lee Ann Elliott
Chairman

Enclosures (AOs 1988-25, 1986-22, 1985-28, 1982-30, 1976-86)