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October 21, 1999

Bradley Litchfield, Esq.
Associate General Counsel for Policy
Office of General Counsel
999 E Street, N.W.
Washington, D.C 20463

AOR 1999-31

Re: Oshkosh Truck Corporation/OTCEPAC Response to Request for Confirmation
and Clarification

Dear Mr. Litchfield:

Thank you for your prompt e-mail response to my letter of October 4, 1999
requesting an advisory opinion. The following is our response to your questions:

- 1) Oshkosh Truck proposes to use its corporate treasury funds to pay the full amount of the costs for the various door prizes and premium gift awards, provided that doing so would comply with FEC regulations, including the 1/3 Rule.
- 2) With respect to the door prizes to be awarded at the 1999 OTECPAC luncheon, but not the vacation resort package to be awarded in future years, Oshkosh Truck intends to purchase prize items for same amount as their stated face value.
- 3) We propose that the amount of contributions to OTCEPAC that would be linked to the door prizes awarded at the 1999 luncheon will be based upon the total of payroll deducted contributions received by OTCEPAC, from those within the restricted class, between the date the PAC event is announced and the date it is held.
- 4) The winner of the grand door prize, such as a vacation resort package, will not be determined until the 2000 PAC event is held. With respect to the second part of your question, your presumption is correct. The PAC receipts that will be the basis for determining the application of the 1/3 rule that could require PAC reimbursement to the corporation will be the total PAC contributions received via payroll deduction from qualified corporate employees during the period from the 1999 PAC event to the 2000 PAC event.

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061300/0101

Bradley Litchfield, Esq.

October 21, 1999

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5) An eligible PAC solicitee would qualify to win the grand door prize, such as a vacation resort package, if such person maintained a payroll deduction for six months prior to the 2000 PAC event. An eligible PAC solicitee would qualify to win one of the lesser valued door prizes, such as a \$50.00 gift certificate for dinner at a local restaurant or a gift certificate for merchandise from the Oshkosh Truck or Pierce Manufacturing novelty catalog, if such person maintained a payroll deduction for one month prior to the 2000 PAC event.

Rationale: By taking this two track approach, OTCEPAC will be able to effectively promote contributions to the PAC from eligible employees throughout the year. Employees who sign up for payroll deduction relatively early in the cycle (i.e. at least six months before the event) will be eligible for both the grand prize and the lesser valued prizes. Those who choose to sign up relatively late in the cycle, when interest in the upcoming event is likely to be greatest, will still be eligible to win something. Any eligible employee who signs up relatively late in the cycle (i.e. more than one month and less than six months before the event) will also have an incentive to contribute, because that person would still be eligible for a lesser valued door prize. Any perceived incentive to delay participation until just before the event will be obviated by the fact that those who sign up late will only be eligible for the lesser valued prize.

Limiting eligibility for the grand door prize to those who maintain a payroll deduction during every pay period during the year prior to the event, as suggested in your query, would undercut OTCEPAC's efforts to raise money through its payroll deduction plan since promotion of the grand prize would effectively be limited to the period immediately preceding the announcement of an event that will not take place for an entire year. Human nature suggests that it will be hard to generate enthusiasm for a door prize that will be awarded so far in the future.

6) With respect to the premium gift program to encourage employees to sign up their fellow eligible employees for the payroll deduction plan, the new payroll deduction contributor would not need to maintain his/her payroll deduction for any specified minimum time period. However, in order for the new payroll deduction contributor to be eligible for door prizes, he/she would need to maintain the payroll deduction for the period of time specified in the answer to Question #5 above, and no new payroll deduction contributor successfully recruited pursuant to the premium gift program may ever be credited to any other recruiter for purposes of qualifying for a gift under the premium gift program.

I hope these responses have clarified the points raised in your e-mail message. Please do not hesitate to contact me if you have any other questions. Again, thank you for your interest in our request for an advisory opinion.

Sincerely,



Theodore H. Bornstein

FOLEY & LARDNER

Bradley Litchfield, Esq.

October 21, 1999

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**cc: Timothy Dempsey, Esq.
Mr. Fred Fielding
Ms. Lynn Jones**

FROM NBL on 10/8/99

To: tbornstein@foleylaw.com
cc: bcc to Marinelli and Merita Johnson
Subject: Letter to FEC/OGC dated October 4, 1999, on behalf of Oshkosh Truck Corporation/OTCEPAC

I am the OGC Associate General Counsel/Policy and have reviewed the subject letter as an advisory opinion request.

Your proposal is very interesting and unique in terms of what we have previously considered. There are several points that need some confirmation and clarification before we can formally designate it with an AOR # and proceed to research and prepare a draft for the Commission. See generally, 11 CFR 112.1.

Your written responses to these questions will be necessary. If desired, you may initially email your response and then followup with identical response in a signed letter sent fcm.

1) Please confirm that Oshkosh proposes to use its corporate treasury funds to pay the full amount of the costs for the various door prizes and premium gift awards, provided that doing so would comply with the FEC regulations; primarily the "1/3 rule" in 11 CFR 114.5(b)(2).

2) Re door prizes to be awarded at 1999 OTCEPAC luncheon, but not the vacation resort package: Will these prize items be purchased by Oshkosh for the same amount as their stated face value? That is, \$50 each for the restaurant and merchandise catalogue gift certificates and two NFL game tickets for \$150? Or will these prizes be provided in some other manner or on some basis other than purchase by Oshkosh? If so, please describe who would be the source of the gifts and the basis for their valuation.

3) In same context as question 2: How do you propose to determine the amount of contributions to OTCEPAC that would be linked to the door prizes awarded at the 1999 luncheon? For example, the total of payroll deducted contributions received by OTCEPAC, from those eligible for the prizes (i.e. within the restricted class for PAC solicitation), between the date the PAC event is announced and the date it is held? Or some other basis? Please explain.

4) Re door prize of vacation resort package: I presume that the winner of this prize will not be determined until the 2000 PAC event? Please confirm. If my presumption, is incorrect, please explain the process for awarding this prize. I also presume that the PAC contribution receipts that will be the basis to determine the results of the fundraising campaign for winning the resort package (and also to determine the possible application of the 1/3 rule that could require PAC reimbursement back to the corporation) will be the total PAC contributions received via payroll deduction from qualified corporate employees during the period from the 1999 PAC event to the 2000 PAC event. Please confirm. Or explain the proposal in more detail if my presumption is incorrect.

5) In same context as question 4: Describe the class of eligible PAC solicitees who would qualify to win the vacation resort prize. Specifically, would such a person have to maintain a payroll deduction, for a PAC contribution, during every pay period from the 1999 PAC event until the 2000 PAC event? If not, explain the circumstances in which an eligible person could make payroll deduction PAC contributions for less than the entire period.

6) Re "bounty gifts" for recruiting new payroll deduction PAC contributors: How long would a new payroll deduction PAC contributor need to maintain his/her payroll deduction to qualify the soliciting (or recruiting) employee for the premium or bounty gifts? Perhaps, there would be no such time period? Please confirm and explain. I presume that the time period for counting the total payroll deduction contributions made by all the newly recruited PAC contributors (as a class) would be 12 months, from the 1999 PAC until the 2000 PAC event? Please confirm.

When we receive your responses, we will give further consideration to your letter as an advisory opinion request. If you have any questions about the above inquiries, please contact me.

Thanks,

**N. Bradley Litchfield
Associate General Counsel/Policy
Federal Election Commission**

**Telephone: 202-694-1650
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CLIENT/MATTER NUMBER
061300/0205

October 4, 1999

Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, D.C. 20463

Dear Sir:

We represent Oshkosh Truck Corporation and its political action committee, the Oshkosh Truck Corporation Employees' Political Action Committee (OTCEPAC). Our client seeks an advisory opinion from the FEC regarding the applicability of the One-Third Rule to payroll deduction contributions collected over a 12-month period between fundraising events. Specifically, Oshkosh would like guidance concerning the rule's operation with respect to OTCEPAC reimbursements to Oshkosh for the cost of door prizes and premiums for employees who recruit new members to OTCEPAC.

FACTS

The Oshkosh Truck Corporation Employees' Political Action Committee (OTCEPAC) is a multi-candidate separate segregated fund (SSF) established in 1995 (FEC ID #C00304477). Its connected organization is the Oshkosh Truck Corporation. Pierce Manufacturing Corporation, referred to later in this letter, is a wholly-owned subsidiary of the Oshkosh Truck Corporation.

OTCEPAC holds an annual luncheon for members of the restricted class who contribute to the PAC through its payroll deduction plan. In the past, OTCEPAC has given gifts of nominal value, such as coffee mugs and sweatshirts, to PAC contributors at the luncheon. In an effort to increase participation in the payroll deduction program, OTCEPAC is planning to expand its programs for encouraging eligible employees to contribute. In

conjunction with its announcement of its annual luncheon later this year, OTCEPAC plans to announce that it will give door prizes to PAC contributors. For its 1999 PAC luncheon, eligible employees who are participants in the payroll deduction plan during the period between the announcement of the event and the date of the event will be eligible for door prizes. Door prizes for the 1999 event will include \$50.00 gift certificate at a local restaurant, a \$50.00 gift certificate for merchandise purchased from the Oshkosh Truck or Pierce Manufacturing novelty catalogues and two tickets to an NFL football game (approximate value \$150.00). The aggregate value of door prizes will be approximately \$400.

As a further inducement to contribute, at the 1999 luncheon it will be announced that in addition to the door prizes outlined above, contributors to the PAC through payroll deductions during the approximately 12 months between the 1999 luncheon and the 2000 luncheon will be eligible for a weekend getaway package at a vacation resort valued at approximately \$2,500. (The precise value of the package will depend upon seasonal air fares and cost of resort accommodations.) The aggregate value of door prizes will be approximately \$2900.

Each person who contributes to the PAC has an equal chance to win a door prize regardless of the size of his/her contribution to the PAC. Winners need not be present at the event.

In addition, OTCEPAC plans to create a premium gift program to encourage employees to sign up their fellow eligible employees for the payroll deduction plan. The value of the gift premium will vary according to the number of eligible employees that the employee successfully encourages to enlist. An employee who signs up three new eligible colleagues during the 12 months between events would be entitled to a \$50 gift certificate at a local restaurant; an employee who signs up six new eligible colleagues would be eligible for the restaurant gift certificate and a \$50.00 gift certificate for items in the Oshkosh Truck and/or Pierce Manufacturing novelty catalogue. An employee who signs up ten new payroll contributors would receive two NFL tickets valued at approximately \$150.00.

INQUIRY

May the OTCEPAC count payroll deduction contributions it collects during the approximately 12-month period between its 1999 luncheon and the 2000 luncheon for purposes of calculating the One-Third Rule with respect to SSF reimbursements to its connected organization, Oshkosh Truck Corporation, for the cost of door prizes and premiums for employees who recruit new PAC contributors? OTCEPAC has chosen a 12-month period in the interest of conserving financial and personnel resources. If the FEC feels that a 12-month period would not appropriate, we would appreciate guidance regarding the acceptable length of time between fundraising events.

FOLEY & LARDNER

Federal Election Commission

September 30, 1999

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Our client understands that the FEC has not yet considered this question in an advisory opinion. We hope to obtain an advisory opinion on this matter at your earliest convenience. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. H. Bornstein', with a long horizontal stroke extending to the right.

Theodore H. Bornstein

**cc: Mr. Timothy Dempsey, Executive Vice President and General Counsel
Oshkosh Truck Corporation
Mr. Fred Fielding, Vice President
Oshkosh Truck Corporation**