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April 17, 2020

Mr. Jeff S. Jordan, Assistant General Counsel
Attn: Kathryn Ross, Paralegal
Office of Complaints Examination and Legal Administration
Federal Election Commission
1050 First Street, NW
Washington, DC 20463

Re: Matter Under Review 7707 (American Muscle Car Museum)

Dear Mr. Jordan:

On March 3, 2020, the Federal Election Commission (“FEC” or “Commission”) notified our client, the American Muscle Car Museum (“Museum”), of a complaint filed by Robert Burns, campaign manager for Florida congressional candidate Jim Kennedy. The Commission extended the deadline for responding until today.

The complaint alleges that the Museum and/or its President, Mark Pieloch, made a prohibited, in-kind contribution to Congressman Bill Posey’s re-election campaign when making the Museum venue available for a campaign event on September 7, 2019. But the complaint misstates both the facts and law. First, Mr. Pieloch owns the property at issue, not the Museum. Second, neither the Museum nor Mr. Pieloch charge a fee to any of the numerous community organizations that use the property. Thus, nothing of value was provided to the Posey campaign that would be considered an in-kind contribution. Moreover, as a campaign volunteer, the Federal Election Campaign Act of 1971, as amended (“FECA”), expressly permits Mr. Pieloch to use his real and personal property in support of his volunteer activities without making an in-kind contribution.

Accordingly, and as further detailed on the following pages, the Commission should find no reason to believe the Museum or Mr. Pieloch violated the FECA and dismiss the complaint.

Factual Background

Mark Pieloch is a successful Florida businessman who made his living in the pet pharmaceutical industry and has become “one of the Space Coast’s foremost philanthropists.”¹ Mr. Pieloch

¹ Rick Neale, *Melbourne Muscle Car Museum Owner Donates 3 Cars for \$95,500 for Homeless Pets, Cancer*, Florida Today (Jan. 24, 2018), at <https://www.floridatoday.com/story/news/2018/01/24/melbourne-muscle-car-museum-owner-donates-3-cars-95-500-homeless-pets-cancer/1057084001/>; see also Henry Stephens, *Councilman Calls Out the Canine Cavalry to Help Build New Dog Park in February*, VeroNews.com (Dec. 4, 2019), at

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personally owns real estate located at 3500 Sarno Road in Melbourne, Florida.² He also personally owns approximately 300 antique and special automobiles which he garages at that location.³ In 2016, Mr. Pieloch established the Museum to make his property and unique automobile collection available for tours and charitable and civic use.⁴ The Museum does not own or lease the premises or the vehicles, but rather brands the venue for tours by school groups and senior citizen groups as well as for fundraising and similar events by dozens of charitable and civic organizations.⁵

The Museum is not open for general public admission in the same way as many other museums.⁶ Rather, Mr. Pieloch and the Museum make the property available to the community in connection with tours and events.⁷ They never charge any fee for activities held at the venue,⁸ and Mr. Pieloch volunteers his time to welcome attendees and give free tours of his automobiles.⁹

<http://veronews.com/2019/12/04/councilman-calls-out-the-canine-cavalry-to-help-build-new-dog-park-in-february/>; Greg Pallone, *Melbourne Business Owner Donates New Trailer to Boy Scout Troop 285*, Spectrum News (Aug. 20, 2018), at <https://spectrumlocalnews.com/nys/central-nys/news/2018/08/20/melbourne-business-owner-donates-new-trailer-to-boy-scout-troop->.

² Exhibit A, Declaration of Andrew Mackey ¶ 2 (hereinafter “Mackey Decl.”); see also Property Record for 3500 Sarno Road, Melbourne, Florida at <https://www.bcpao.us/PropertySearch/#/account/2745421>; Carolina Cardona, *Melbourne Man Flexes His Love for Muscle Cars with Museum Collection*, WKMG News 6 (Feb. 20, 2020), at <https://www.clickorlando.com/news/local/2020/02/20/melbourne-man-flexes-his-love-for-muscle-cars-with-museum-collection/>.

³ Mackey Decl. ¶ 3.

⁴ The complaint asserts that “[t]he Muscle Car Museum [is] owned by Mark Pieloch.” Compl. ¶ 2. This statement is inaccurate. As a non-profit organization, the Museum is not “owned” by any individual. Mr. Pieloch is the president of the Museum and owns the real and personal property that the Museum makes available for viewing by civic, school, and charitable organizations. Mackey Decl. ¶¶ 2, 3.

⁵ *Id.* ¶¶ 2, 3, 4.

⁶ *Id.* ¶ 4; see also Compl. ¶ 2 (observing that the venue “is not open to the public”).

⁷ Mackey Decl. ¶ 4; see also Compl. ¶ 2 (acknowledging that the Museum serves as a venue for “numerous fundraisers throughout the year for many different organizations in the community”).

⁸ The complaint asserts that the Museum maintains a “regular entry price to the museum [that] is and has been \$100 per person” and “discount[ed] the admission price by 95%” for attendees of the Posey Committee’s event. Compl. ¶ 3. Although stated under oath, these statements are false. The Museum has never charged admission fees to the public, so it has no admission price to discount. Mackey Decl. ¶ 5. Each organization that uses the venue decides whether to request contributions, and how much to request, in connection with their events, and each organization handles their own contributions without involvement of the Museum. *Id.* ¶ 7.

⁹ *Id.* ¶ 9.

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Over the three-plus years that the Museum has been making the property available, dozens of charitable and civic organizations, school groups, senior citizen groups, and car clubs have toured or used the venue.¹⁰ Activities hosted at the Museum have ranged from Autocross competitions to fundraising receptions to appreciation events – all for free.¹¹ The civic and charitable organizations that have chosen to fundraise around their use of the venue have decided for themselves how much to request from their supporters and they have handled all funds.¹² Neither Mr. Pieloch nor the Museum set contribution levels, handle the contributions, or charge any kind of fee.¹³

By late 2018, so many organizations had signed up to hold events at the Museum, and the list of additional requests had become so long, that the Museum could not accommodate all requests by new organizations.¹⁴ The Museum began declining requests from new organizations in 2018 and telling them the venue was fully booked through 2020.¹⁵ In October 2018, the Museum posted on its website the following notice:

“WE ARE NOT ACCEPTING ANY NEW CHARITY FUNDRAISERS AT THIS TIME! Please do not contact us to host any new future charity fundraisers, since we currently have over 200 charities on our waiting list.”¹⁶

And now, because of the Museum’s closure during the coronavirus pandemic, the 2020 event calendar has been extended well beyond capacity.¹⁷ The events scheduled for dozens of organizations this year have been postponed or cancelled.¹⁸

In 2018, the Friends of Bill Posey Committee (“Posey Committee”) discussed holding an event at the Museum venue in 2019.¹⁹ The Museum made a commitment to the Posey Committee for the following year and placed it “in line” for an event in 2019, on the same terms as all other organizations that had held prior events and made such requests.²⁰ The event eventually was

¹⁰ *Id.* ¶ 4.

¹¹ *Id.* ¶¶ 4, 5.

¹² *Id.* ¶ 7.

¹³ *Id.* ¶ 7.

¹⁴ *Id.* ¶ 11.

¹⁵ *Id.* ¶ 11.

¹⁶ *Id.* ¶ 11 (see <https://www.americanmusclecarmuseum.com/questions.html>).

¹⁷ *Id.* ¶ 12.

¹⁸ *Id.* ¶ 12.

¹⁹ *Id.* ¶¶ 13, 16.

²⁰ *Id.* ¶¶ 13, 16.

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scheduled for September 7, 2019.²¹ The Posey Committee handled all invitations, admissions, contributions, and paid for all refreshments.²²

Subsequently, a representative of a rival campaign, the Jim Kennedy for Congress Committee, called a Museum representative to inquire about the Posey Committee's use of the venue and was told that the Posey Committee was calendared for 2019 based on a commitment made in 2018.²³ The caller then asked if the Kennedy Committee could schedule an event and was told what all other organizations have been told and what has been posted on the Museum's website since October 2018 – that the venue's schedule was full through 2020, with over 200 pending backlogged requests.²⁴ Partisan considerations did not play a role in the Museum's inability to schedule an event for the Kennedy Committee during the requested period.²⁵

Legal Analysis

The complaint alleges that the Museum and/or Mr. Pieloch made a prohibited, in-kind contribution to the Posey Committee by making the venue available for less than “the regular entry price to the [M]useum.”²⁶ As an initial matter, the Museum does not charge for admission, meaning that neither the Museum nor Mr. Pieloch made a contribution to any of the many entities – including the Posey Committee – who have used the venue.

Moreover, because the venue is owned personally by Mr. Pieloch, and he volunteers his time in connection with civic and charitable events held there, use of the venue is exempt from the definition of contribution pursuant to 52 U.S.C. § 30101(8)(B)(ii). Finally, even if the Commission analyzed the Museum's limited role in making the venue available as a use of the Museum's corporate resources – which the FEC should not do, given that Mr. Pieloch owns the property – the free use of the venue would not constitute an in-kind contribution under 11 C.F.R. § 114.13. Both exemptions are discussed in turn.

1. The Use of Real or Personal Property Owned by Mr. Pieloch Is Not a Contribution.

Under FECA, the term “contribution” excludes “the use of real or personal property, including a church or community room used on a regular basis by members of a community for noncommercial purposes . . . voluntarily provided by an individual to any candidate.” 52 U.S.C.

²¹ *Id.* ¶ 13.

²² *Id.* ¶ 14.

²³ *Id.* ¶¶ 15, 16.

²⁴ The complaint asserts that someone – it is unclear who – requested use of the Museum and was declined on the basis that the Museum “do[es] not participate in political campaigns but made an exception for Mr. Posey.” Compl. ¶ 6. This statement does not provide the true explanation given to the campaign. See Mackey Decl. ¶¶ 15, 16.

²⁵ *Id.*

²⁶ Compl. ¶ 3.

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§ 30101(8)(B)(ii).²⁷ Here, Mr. Pieloch personally owns the venue, which effectively serves as a personal garage to hold his automobiles. He did not pay a third party to rent the venue. He personally volunteered by attending the event, welcoming people, and providing tours of his vehicles. And he has regularly made the venue available on the same free terms to dozens of other civic and non-profit organizations in the community for three-plus years. That is not a contribution under the statute and conclusively resolves this matter.

While the statutory text is decisive, the FEC has promulgated two regulations that expand upon the statute and are organized based on the type of property at issue. The most pertinent regulation, 11 C.F.R. § 100.75, provides that no contribution results from an individual's use of "residential premises" to assist a candidate.²⁸ This regulation exempts use of the Museum here because a person's garage, regardless of its location, is a natural extension of one's residence.²⁹

In the alternative, the other regulation, 11 C.F.R. § 100.76, provides that no contribution results where an individual "obtains the use of a church or community room and provides such room to any candidate . . . without regard to political affiliation."³⁰

This provision historically has presumed the individual rents the community room from a third-party,³¹ but here Mr. Pieloch paid no rent for the garage since he personally owns it. In any event, the remaining conditions set forth in Section 100.76 are satisfied here. First, Mr. Pieloch provided the garage "in the course of volunteering personal services to" the Posey Committee.³² Second, the garage "is used on a regular basis by members of the community for non-commercial purposes." And third, although extra-statutory and of particularly dubious

²⁷ The statute also exempts from the definition of "contribution" the "cost of invitations, food, and beverages" provided by the volunteer in connection with the event. 52 U.S.C. § 30101(8)(B)(ii). That provision is not relevant here because the Posey Committee paid for its own invitations, food and beverages. Mackey Decl. ¶¶ 14.

²⁸ The only qualification imposed by 11 C.F.R. § 100.75 applies to a "recreation room" located within an individual's "residential complex where the individual volunteering resides, provided that the room is available for use without regard to political affiliation." The "recreation room" proviso is not applicable in this matter because the garage is not part of a "residential complex."

²⁹ See, e.g., *City of Bismarck v. Brekhus*, 908 N.W.2d 715, 719, cert. denied sub nom. *Brekhus v. City of Bismarck*, N.D., 139 S. Ct. 187 (2018) (explaining that "a closed garage may be an intimate part of the residence"); see also H. Rep. No. 96-422 (Sept. 7, 1979) (discussing the relevant FECA provision and observing that "[a]n individual may of course have more than one residence").

³⁰ 11 C.F.R. § 100.76.

³¹ See, e.g., Factual and Legal Analysis at 6-7, Matter Under Review 5739 (Darcy Burner for Congress) (finding that individual's payments from personal funds for rental of community facility, the Northwest Arts Center, was not a contribution).

³² Mackey Decl. ¶¶ 9, 14.

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lawfulness,³³ particularly where an individual volunteer personally owns the space, the garage was made “available for use by members of the community without regard to political affiliation.”³⁴

In sum, Mr. Pieloch’s provision of his personal garage for use by the Posey Committee was not a contribution.

2. Alternatively, No Contribution Occurred Because the Law Permits Use of Corporate Facilities.

Because the Museum does not own or rent Mr. Pieloch’s garage, but merely brands the venue for charitable, civic and educational uses, the corporate contribution rules do not apply to this matter. However, were the Commission nevertheless to analyze the circumstances through the rules applicable to the use of corporate facilities, still no contribution was made. The law is well-established that use of a corporate facility does not constitute a contribution so long as the facility is made available to non-political committees on the same terms.³⁵ Here, the venue was made available to the Posey Committee on the same terms and subject to the same conditions that have applied to dozens of other civic, charitable and tour groups. When the Kennedy Committee called, they too were subjected to the same terms and conditions in place since at least October of 2018.

3. Any Monetary Value Was *De Minimis*.

Because the venue is unique and not leased to others, there is no readily obtainable market value that could be assigned to this specific venue for three hours of use. Furthermore, even if such a value could be obtained, it would be of such *de minimis* amount to warrant dismissal on prosecutorial discretion grounds.³⁶

³³ See, e.g., *FEC v. Swallow*, 304 F. Supp. 3d 1113, 1115 (D. Utah 2018) (noting that the “Commission, as an independent agency created by Congress for the sole purpose of enforcing FECA[,] had no authority to write a regulation that went beyond the [FECA] itself”).

³⁴ Mackey Decl. ¶¶ 15, 16.

³⁵ See 11 C.F.R. § 114.13.

³⁶ See, e.g., Factual and Legal Analysis, MUR 7367 at 2 (Anthony J. Brindisi) (Nov. 7, 2018), at <https://www.fec.gov/files/legal/murs/7367/18044454012.pdf> (dismissing total of \$2,000 in prohibited contributions from candidate’s state committee under a *de minimis* rationale); Factual and Legal Analysis, MUR 6809 at 3 (Kultala for Congress) (Aug. 20, 2015), at <https://www.fec.gov/files/legal/murs/6809/15044375934.pdf> (finding that a \$1,000 impermissible contribution was *de minimis*).

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Conclusion

For the reasons set forth above, no contribution was made when the Posey Committee used the Museum venue for a campaign event on September 7, 2019.³⁷ The Commission must find no reason to believe a violation occurred and dismiss the complaint.

Sincerely,



Lee E. Goodman
Andrew G. Woodson

Exhibit A – Declaration of Andrew Mackey (April 15, 2020).

³⁷ Although not the focus of the complaint, for the same reasons, no contribution resulted from similar events in 2018 (a different election cycle).

BEFORE THE FEDERAL ELECTION COMMISSION

State of Florida)	
)	Matter Under Review 7707
Brevard County)	

DECLARATION OF ANDREW MACKEY

I, Andrew Mackey, hereby declare as follows:

1. I am the Event and Media Coordinator for the American Muscle Car Museum ("Museum"), a private museum located in Melbourne, Florida. In that capacity, I manage the scheduling and organization of Museum events, coordinate our volunteer schedule, and maintain our website. I have organized Museum activities since March 2018.
2. Mark Pieloch founded the Museum in 2016 as a 501(c)(3) non-profit. Mr. Pieloch serves as the Museum's president. The Museum is located at 3500 Sarno Road in Melbourne on property personally owned by Mr. Pieloch. The Museum does not own or lease the premises.
3. The Museum displays approximately 300 antique and unique vehicles for viewing. Nearly all of the vehicles on display are owned by Mr. Mark Pieloch personally.
4. For reasons discussed further below, the Museum is not open to the public in the same way as many other museums. Instead, the Museum makes Mark's property available each year to dozens of civic groups, non-profit and charitable organizations, car clubs, veterans groups, and similar organizations to hold their events. The organizations that have used the Museum for fundraising, appreciation, educational and similar events include: the Boy Scouts and Girl Scouts, League of Women Voters, Breast Cancer Awareness, Jewish Federation, Rotary Clubs, Brevard Symphony Youth Orchestra, Melbourne Art Festival, Brevard Alzheimers Association, Brevard Chamber of Commerce, Brevard County Sheriff's Office Charitable Foundation, Brevard County Medical Society, Candlelighters Association, and the Hemophilia Association, among many others. We also conduct private tours for school groups and residents of assisted living facilities.
5. The Museum never charges a fee for anyone to tour the facility or for use of the venue.
6. Many of our events are posted on the Museum's website but many others are not for privacy or other reasons. We estimate over 20,000 people visit the Museum each year for free tours and other private events.

7. When organizations use the venue for events, the organizations handle all invitations and decide whether to ask for contributions from their invitees. The Museum does not ask for contributions to the events held by private organizations. Whether the organizations request contributions, and how much they request, is solely in the discretion of the organizations. The Museum does not receive contributions in connection with the events or handle contributions made to the organizations. The organizations receive and keep 100 percent of the contributions they raise in connection with their events.
8. For some charitable, civic or school events, the Museum provides refreshments, such as pizza for school groups. For many other events, no refreshments are provided or the private organization funds its own refreshments.
9. Mr. Pieloch, who has had a successful career in the pet pharmaceutical and food field, often volunteers his time to attend civic and charitable events, welcome guests, and give tours of his vehicles. The Museum does not charge any fee for Mr. Pieloch's tours.
10. The Museum's availability is limited by a number of factors. First, beginning in 2018, we decided not to make the venue available from Memorial Day to Labor Day. The Museum also does not schedule events over holidays such as Thanksgiving, Christmas, New Year's, Passover and Easter. Because Mr. Pieloch desires to attend major events, we cannot schedule events on dates when he is unavailable. Mr. Pieloch travels extensively, which restricts how many events we can hold. And there is a practical limit to Mr. Pieloch's ability to attend events week in and week out for these free events. There are times when the venue is being cleaned or cars are being moved or the property is being serviced or repaired. We call upon local volunteers to service some Museum events and cannot call upon them week in and week out, so we have to limit the number of events for when we can recruit a sufficient number of volunteers. Some of our events require set up or clean up time too.
11. Due to these limitations, the Museum could not accommodate all the free events that people and organizations requested to hold. So many organizations were signing up in 2018 and the list of requests had become so long, that we had more organizations than we could reasonably accommodate well into 2019 and 2020. In 2018, we began declining requests from new organizations and telling them we were booked through 2020 but we would consider them for a future opening. In October 2018, we posted a message on the Museum's website that stated:

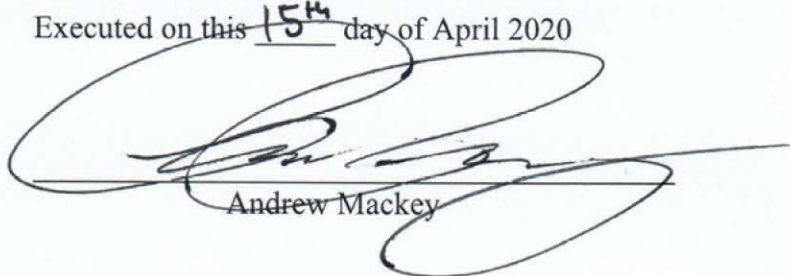
“WE ARE NOT ACCEPTING ANY NEW CHARITY FUNDRAISERS AT THIS TIME! Please do not contact us to host any new future charity fundraisers, since we currently have over 200 charities on our waiting list.”

See <https://www.americanmusclecarmuseum.com/questions.html>

12. We had a backlog of requests to use the venue as we entered 2020. Now that we have had to close due to the coronavirus pandemic and a state directive, we have cancelled and/or agreed to postpone events for 2020. We will not be able to re-schedule events for groups on our waitlist until the state re-opens public venues. As a result, we have been unable to schedule any new events in 2020 and probably will not be able to accommodate any new groups until 2021 or maybe even 2022.
13. I made arrangements for the Friends of Bill Posey Committee to use the Museum as an event venue on September 7, 2019. The Posey Committee had held two events at the venue in 2018, one in February 2018 and one in September 2018, before we posted our policy about the backlog on the Museum's website in October. The Posey Committee was in line for an event in 2019 because they held two previous events at the Museum and discussed holding a third in September 2018. We honored that commitment.
14. The Posey Committee assumed all responsibility for invitations, checking people into the event, and paying for refreshments. Neither the Museum nor Mr. Pieloch paid for any refreshments served at the Posey Committee's event. Mr. Pieloch attended the Posey Committee's event and provided free tours like he does at many other events.
15. After the Posey Committee's September 2019 event, I received a telephone call from someone who said he was calling on behalf of the campaign of Jim Kennedy. He asked me about the Posey Committee's event at the Museum. He then asked me if the Kennedy campaign could host an event at the Museum. I told him what I have been telling all other requestors and what is posted on our website. I told him that currently the Museum's schedule was full and there was a long waitlist to get on a future Museum schedule. The call ended there. I declined the request solely for these reasons and without regard to the group's partisanship.
16. I did not tell the gentleman that the Posey campaign was an "exception." The Posey campaign was in line for an event in 2019 based on a discussion in September 2018. The Museum does not have a partisan test for use of the venue.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on this 15th day of April 2020



Andrew Mackey