



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

December 2, 1999

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1999-31

Theodore H. Bornstein, Esquire  
Foley & Lardner  
Washington Harbour  
3000 K Street, NW, Suite 500  
Washington, DC 20007-5109

Dear Mr. Bornstein:

This refers to your letters dated October 4 and 21, 1999, which request an advisory opinion on behalf of the Oshkosh Truck Corporation ("Oshkosh") and its separate segregated fund, the Oshkosh Truck Corporation Employees' Political Action Committee ("OTCEPAC"), concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations to Oshkosh's proposed fundraising activities on behalf of OTCEPAC.<sup>1</sup>

**FACTS**

You state that 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. These plans entail the use of Oshkosh corporate treasury funds to purchase a variety of prizes and premium gifts.

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<sup>1</sup> OTCEPAC is a multicandidate political committee which filed its statement of organization with the Commission in 1995. Pierce Manufacturing Corporation, referred to later in this opinion, is a wholly-owned subsidiary of the Oshkosh Truck Corporation.

You state that 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 a \$50 gift certificate at a local restaurant, a \$50 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). The aggregate value of the door prizes will be approximately \$400. You 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.

You state that as a further inducement to contribute, OTCEPAC will announce at the 1999 luncheon that, in addition to the above door prizes, contributors to the PAC through payroll deductions during the 12 months between the 1999 luncheon and the 2000 luncheon will be eligible for a grand door prize. This will be a weekend getaway package at a vacation resort valued at approximately \$2,500.<sup>2</sup> The aggregate value of door prizes for the 2000 luncheon will thus be approximately \$2,900. You explain that each person who contributes to the PAC has an equal chance to win a door prize regardless of the amount of his/her payroll deduction contributions to the PAC. Winners need not be present at the event.

You further explain that the winner of the grand door prize will not be determined until the 2000 PAC event is held. An eligible PAC solicitee would qualify to win the grand door prize 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 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.

You state that, 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 (that is, 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 (that is, more than one month and less than six months before the event), when interest in the upcoming event is likely to be greatest, will still be eligible to win something. Nevertheless, 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 prizes. The PAC receipts that will be the basis for determining the application of the one-third rule that could require PAC reimbursement to the corporation will be the total PAC

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<sup>2</sup> The precise value of the package will depend upon seasonal air fares and the cost of the resort accommodations.

contributions received via payroll deduction from qualified corporate employees during the period from the 1999 PAC event to the 2000 PAC event.

In addition, OTCEPAC plans to create a premium gift program to encourage employees to sign up their fellow eligible employees for the payroll PAC 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 gift certificate for items in the Oshkosh Truck and/or Pierce Manufacturing novelty catalogue. An employee who signs up ten new payroll deduction PAC contributors would receive two NFL tickets valued at approximately \$150.

Under the premium gift program, the new payroll deduction contributor would not need to maintain his/her payroll deduction for any specified minimum time period in order for the recruiting employee to receive a gift. 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 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.

Oshkosh seeks an advisory opinion from the FEC regarding the applicability of the "one-third rule" to these Committee fundraising efforts, including the program for payroll deduction contributions collected over a 12-month period between fundraising events (as described above). As part of this guidance, Oshkosh would like specific advice concerning the rule's operation with respect to the Committee's reimbursements to Oshkosh for the cost of door prizes and premiums for employees who recruit new members to OTCEPAC as part of this program. 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 one-third rule.

## **ACT AND COMMISSION REGULATIONS**

Under 2 U.S.C. §441b, corporations are expressly prohibited from making any contributions or expenditures in connection any Federal election. However, 2 U.S.C. §441b(b)(2)(C) provides an exception to this broad prohibition by excluding from the definition of the terms "contribution or expenditure" a corporation's payment of the costs incurred in the establishment, administration and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation. See also 11 CFR 114.1(a)(2)(iii).

The term "establishment, administration and solicitation costs" is, in turn, defined in the regulations as, "...the cost of office space, phones, salaries, utilities, supplies, legal and accounting fees, fund-raising and other expenses incurred in setting up and running a separate segregated fund established by a corporation..." 11 CFR 114.1(b). Section 114.5(b)(2) of the Commission regulations permits a corporation to utilize a raffle or other fundraising device which involves a prize, so long as State law permits and the prize is not disproportionately valuable. Dances, parties, and other types of entertainment may also be used as fundraising devices. However, the regulation further provides that, when using raffles or entertainment to raise funds, a reasonable practice to follow is for the separate segregated fund to reimburse the corporation for costs which exceed one-third of the money contributed to the PAC. (This is referred to as the "one-third rule.")

## **APPLICATION TO OSHKOSH PROPOSAL**

### *Prizes awarded at 1999 luncheon*

As noted above, Commission regulations specifically permit corporate fundraising devices such as a raffle. The Commission noted in its explanation to the regulations that prizes may not be so numerous or disproportionately valuable in relation to the cost of the raffle tickets that the raffle is in effect a trading money situation. For this reason the one-third rule was developed as a reasonable standard to avoid this difficulty. See Federal Election Commission Regulations, Explanation and Justification, House Document No. 95-44, at 107 (1977). Door prizes at the luncheon are indistinguishable from a raffle and the one-third rule could be utilized for the \$400 in prizes to the 1999 luncheon as a guide to avoid the trading money situation.<sup>3</sup>

### *Prizes awarded at 2000 luncheon*

The prizes offered at the 2000 luncheon, as contrasted with those offered for the 1999 luncheon, are greater and the period in which individuals may earn chances to gain these prizes is longer. These circumstances, however, do not affect the analysis. Section 114.5(b)(2) does not delineate any maximum or minimum time period that must be used to determine the total amount of contributions received and the resulting need, if any, for reimbursement by the PAC in applying the one-third rule. Therefore, the Commission concludes that in OTECPAC's specific circumstances, the one-third rule should be applied to determine the amount of reimbursement for Oshkosh funds used to purchase fundraising prizes for the 2000 luncheon, even though the underlying contributions are collected over a 12 month period prior that event. OTCEPAC should aggregate together

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<sup>3</sup> Past opinions have indicated that the cost of the luncheon (food, drink and use of facilities) itself, as distinguished from the raffle prizes or entertainment costs, are considered solicitation expenses of the SSF which could be paid from corporate treasury funds without any need for reimbursement by the SSF. See Advisory Opinions 1980-50 and 1995-17.

the cost of all the prizes to be awarded at the 2000 luncheon and compare that cost with all contributions received during the 12 month period from qualified contributors who participate in the OTCEPAC payroll deduction program.

*Premium gift program for employees*

For the same reasons as explained above, OTCEPAC may also use the one-third rule when determining the reimbursement for costs of the premium gift program designed to encourage eligible employees to promote Oshkosh's payroll deduction program to other eligible employees. This program is linked to Oshkosh's other efforts to boost participation in its payroll deduction program during the 12 month period between the 1999 and 2000 events. OTCEPAC may therefore aggregate the costs and resulting contributions from the premium gift program with those of the 2000 luncheon when applying the one third rule.

The Commission emphasizes that the described PAC payroll deduction program may only be utilized by personnel who qualify as members of the "restricted class" of Oshkosh. 11 CFR 114.1(c), (h) and (j). In addition, all contributions made through the payroll deduction process must comply with Commission regulations that require them to be voluntary. See 11 CFR 114.1(i), 114.5(a).

The Commission expresses no opinion regarding the ramifications of these transactions under Wisconsin State law since those issues are outside its jurisdiction.

This response constitutes an advisory opinion concerning the 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)

Scott E. Thomas  
Chairman

Enclosures (AOs 1995-17 and 1980-50)