

THOMPSON, HINE AND FLORY

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June 7, 1990

WRITER'S DIRECT DIAL NUMBER

Federal Election Commission
999 E Street, NW
Washington, D.C. 02463

(513) 352-6635

Re: Advisory Opinion Request 1990-_____

Dear Commissioners:

This Advisory Opinion Request (AOR) is submitted pursuant to the provisions of 2 U.S.C. §437f by the Suarez Corporation, an Ohio corporation doing business in Canton, Ohio. We are counsel to the Suarez Corporation ("Suarez.") Suarez is engaged in direct marketing sales and has one division, called Pol-Serv, which provides advice to political candidates. The Pol-Serv division has a client which is a political committee as defined at 2 U.S.C. §431(4), and which has requested Suarez' assistance in retiring its campaign debts.

If approved by the Commission, Suarez proposes to engage in the following transactions, together with Pol-Serv's client, and intends, as well, to try to market the concept to other federal political committees.

1. Suarez will sell to Pol-Serv's political committee client a number of articles which Suarez, itself, also sells by direct marketing methods. The price for these items will reflect Suarez' costs attributable to each, and the price will be the same price at which Suarez would sell it to any other entity intending to resell it.

2. The costs^{1/} of these items will be paid in advance by the political committee.

3. It is contemplated that the political committee will sell the item for an amount in excess of the purchase cost. The

1/ Such costs will include all costs of production, advertising, marketing, postage, and other costs reasonably attendant upon the acquisition and resale by Suarez of such item.

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political committee will then, presumably, reap the benefits of "mark up" and have those funds available to repay its debts.^{2/}

4. Suarez Corporation would agree to repurchase any items not sold by the political committee within a specified, commercially reasonable time. The items would be repurchased for the price paid by the political committee to purchase the items in the first place.

It is Suarez' opinion that the foregoing proposal is in accord with the Commission's existing Advisory Opinions in respect of comparable transactions. In particular, we note Advisory Opinion 1988-17, CCH Federal Election Campaign Financing Guide ¶ 5925 (5-20-88). In that Advisory Opinion, the Commission permitted ECI, a domestic corporation whose principle purpose was producing memorial medallions in connection with political activities to provide the medallions to political committees who marketed them in turn. As is proposed herein, all applicable expenses of the transaction were paid in advance by the political committees. Like ECI's proposal, Suarez believes what it proposes is "an effort by a corporation to develop profit-making, arms-length commercial transactions in which the corporation offers to sell products that may be useful to political organizations." (Ibid at p. 11,448; footnote omitted)

Further support for this proposition is found in Advisory Opinion 1982-30, CCH Federal Election Campaign Financing Guide ¶ 5673 (5-14-82). There the Commission permitted a corporation to sell restaurant discount coupon books to a political committee, which then sold those coupon books to raise funds for its campaign. The discount books were sold to the political committee at a commercially reasonable cost, a figure which was derived on the basis of ascertainable standards applicable to non-political entities as well as political committees. Suarez would propose the same type of procedure here.

Finally, the "modified consignment" provisions of the transaction proposed herein comport with Commission's holding in

^{2/} Suarez is not asking the Commission to address any actual, potential or prospective tax effects of such transactions, either for it or for Pol-Serv's political committee client.

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June 7, 1990

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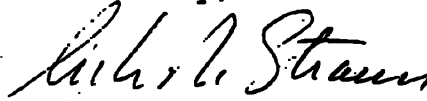
Advisory Opinion 1982-24, CCH Federal Election Campaign Financing Guide ¶ 5666 (4-30-82). In that Advisory Opinion, the Commission permitted artists to advance their artwork to political committees on straight consignment, except that the artists' direct costs were reimbursed in advance by the political committee. Any artwork not sold was returnable and returned, and no contribution was deemed made by the donors. For the same reason, since Suarez will collect in advance all its reasonable costs for the items it expects the committee to sell, no contribution will be made by Suarez.

Suarez will have no control over the use of the materials after they are purchased by the political committee, until such time as Suarez would be obligated to repurchase them under the proposed contract. Suarez proposes to market and sell the identical items (for practical purposes in direct competition with the political committee, for that matter) and would therefore not be acquiring these items for the express purpose of making them exclusively available to the political committee. Rather, Suarez proposes thereafter to market these items, itself, if necessary, immediately upon repurchasing them.

In conclusion, Suarez requests the Commission to opine that the foregoing transaction is legal under the Federal Election Campaign Act of 1971 as amended. Suarez further requests an express finding by the Commission that the proposed transaction will not result in any violation of 2 U.S.C. §441b, by virtue of the fact that it represents an arm's-length transaction wherein all corporate expenses will be advanced by the political committee, and any repurchase of items would also be done in the ordinary course of the Suarez Corporation's business. If the Commission concurs in this proposal, Suarez will then attempt to market it to other political committees in accordance with the express terms and conditions of the Advisory Opinion which may result from this AOR.

If we can provide anything further, please let us know. Thank you very much for your attention of this matter.

Sincerely,



GORDON M. STRAUSS

GMS/pd/DOO



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 25, 1990

Gordon M. Strauss
Thompson, Hine & Flory
2900 DuBois Tower
511 Walnut Street
Cincinnati, OH 45201-5717

Dear Mr. Strauss:

This refers to your letter dated June 7, 1990, on behalf of the Suarez Corporation ("Suarez"), concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the sale of items to a political committee to be used for retiring the committee's campaign debts.

You state that Suarez is engaged in direct marketing sales and has one division, Pol-Serv, which provides advice to political candidates. A political committee that is a client of Pol-Serv has requested the assistance of Suarez in retiring its campaign debts. Suarez proposes to implement the following plan to assist the committee:

Suarez will sell to the committee a number of articles which Suarez also sells by direct marketing methods. The price will reflect Suarez' costs attributable to each item, and the price will be the same as used by Suarez when selling to any other entity for resale. The political committee will sell the item for an amount in excess of the purchase cost. The committee would presumably use the funds from the mark up to repay its debts. Suarez would agree to repurchase any items not sold by the political committee, within a specified, commercially reasonable time, at the price first paid by the committee to purchase the items.

You state that Suarez will have no control over the use of the items after they are purchased by the political committee, until such time as Suarez would be obligated to repurchase them. You also state that Suarez proposes to market and sell the identical items (for practical purposes, in direct competition with the committee) and would therefore not acquire these items for the express purpose of making them exclusively available to the political committee.

Rather Suarez proposes to market these items itself, if necessary, immediately upon repurchasing them.

The Act authorizes the Commission to issue an advisory opinion in response to a "complete written request" from any person with respect to a specific transaction or activity by the requesting person. 2 U.S.C. §437f(a). Commission regulations explain that such a request "shall include a complete description of all facts relevant to the specific transaction or activity with respect to which the request is made." 11 CFR 112.1(c).

In view of the cited requirements, you will need to provide information as to a number of relevant factors referred to in the questions set out below.

- (1) Identify the political committee for whom Suarez intends to implement the plan.
- (2) State whether Suarez will be earning a profit from the political committee on this arrangement, or will be relying on profit obtained from reselling those items returned from the committee.
- (3) Describe the items that Suarez will be selling to the political committee.
- (4) Describe how the committee will market the items. State whether such items will be marketed by the committee as committee-related items, e.g., with the committee's name or logo.
- (5) Describe the circumstances under which Suarez ordinarily markets these items. Your response should include, but not be limited to, the entity that normally buys the product, the type of profit achieved by Suarez, whether Suarez sells to entities that resell, whether Suarez repurchases items that are not sold, and the circumstances of such repurchase.
- (6) Provide examples of Suarez' past or ongoing transactions with commercial entities similar to the transaction proposed in your letter.

In addition, please provide a copy of any proposed agreement between Suarez and the committee with respect to the proposed transaction.

For your information and review, I am enclosing copies of Advisory Opinions 1989-21, 1979-36, and 1976-50.

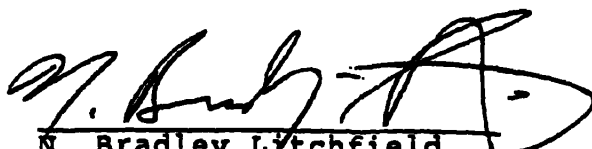
Upon receiving your responses to the above questions and request, this Office and the Commission will give further consideration to your inquiry as an advisory opinion request.

If you have any questions concerning the advisory opinion process, the enclosed opinions, or this letter, please contact the undersigned.

Sincerely,

Lawrence M. Noble
General Counsel

BY:


N. Bradley Litchfield
Associate General Counsel

Enclosures

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THOMPSON, HINE AND FLORY

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August 22, 1990

WRITER'S DIRECT DIAL NUMBER

(513) 352-6635

N. Bradley Litchfield, Esquire
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

Re: Advisory Opinion Request

AOR 1990-19

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WASHINGTON, D.C.

Dear Mr. Litchfield:

This letter constitutes a response to your letter of June 25, 1990, requesting additional information for purposes of enabling the Commission to prepare and issue a Advisory Opinion in response to our request. In addition, the answers provided here reflect our telephone conversation in respect of this matter.

1. Identify the political committee for whom Suarez intends to implement the plan.

The Committee with which the Suarez Corporation, through its subsidiary, Campaign Services, will contract is a registered principal campaign committee for a Republican candidate who lost in his primary election. The campaign has debts and wishes to pay them off prior to terminating, all in accord with the Federal Election Campaign Act of 1971, as amended.

2. State whether Suarez will be earning a profit from the political committee on this arrangement, or will be relying on profit obtained from reselling those items returned from the committee.

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The Suarez Corporation intends to make a profit on each of the component transactions. This will not be affected by whether it takes the items back and sells them on its own. Suarez would expressly not be relying on the prospect of selling returned merchandise for its ultimate profit. Each transaction in the chain is intended to stand on its own.

The Suarez Corporation will make a profit on the initial sale to the political committee. It further anticipates benefiting from the political committee's subsequent sale of the items to the extent that the proceeds from that sale are used to retire the debt to Campaign Services. Finally, if the committee is unable to sell all the items, the Suarez Corporation, in a transaction completely independent of the committee's debts to Campaign Services, will repurchase those items for the cost paid by the committee and thereafter make a profit by reselling them. The profit from the subsequent resale will not be applied to the committee's debts.

3. Describe the items that Suarez will be selling to the political committee.

The type of merchandise being sold to the political committee will include commemorative general merchandise such as jewelry, coins, medals, and other comparable materials.

4. Describe how the committee will market the items. State whether such items will be marketed by the committee as committee-related items, e.g., with the committee's name or logo.

The Suarez Corporation does not intend, unless it is engaged to do so, to be involved in marketing these items once they are purchased by the committee. It is anticipated that the committee will market the items via direct mail solicitation, using its own mail list and other mailing lists which it may purchase or rent. The precise marketing techniques will be left to the committee's discretion, though it is understood that the committee will in all cases make representations to the effect that all proceeds from the sale of the items will benefit the committee.

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N. Bradley Litchfield, Esquire
August 22, 1990
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5. Describe the circumstances under which Suarez ordinarily markets these items. Your response should include, but not be limited to, the entity that normally buys the product, the type of profit achieved by Suarez, whether Suarez sells to entities that resell, whether Suarez repurchases items that are not sold, and the circumstances of such repurchase.

Suarez Corporation's normal business activities consist of direct mail marketing of items such as those which will be sold to the political committee. This includes list acquisition, test mailings and marketing research. Suarez does not, as a regular part of its business activities, sell to entities which resell. If this AOR is approved, Suarez will sell items for resale under the terms and conditions of the resulting Advisory Opinion. The price Suarez will charge will reflect a "markup" and profit for Suarez. Further, Suarez will seek to establish such relationships with other political committees, regardless of whether they are clients, if this arrangement is approved.

Suarez's normal buyer is an individual, responding from a private residence. Suarez considers it inappropriate to divulge the general "mark-up" or level of profit on its sales, for two reasons:

a. Such information is privileged and proprietary, and not relevant to the nature of this transaction;

b. The profit on each item is different from the profit from every other item, in any case. There is no standard "mark-up" or "profit." Profit is a function of the difference between cost and sales price, and is affected greatly by the level of response to the direct marketing solicitations.

6. Provide examples of Suarez' past or ongoing transactions with commercial entities similar to the transaction proposed in your letter.

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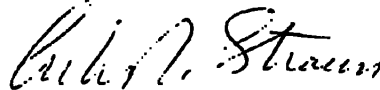
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The closest prior transaction in which the Suarez Corporation has engaged was a royalty arrangement between it and an unaffiliated third party which purchased cosmetics from the Suarez Corporation and sold them in Europe. In that case, Suarez Corporation received a royalty on the sales. Such an arrangement is not contemplated in this transaction because the Federal Election Commission's prior Advisory Opinions counsel that it would violate the Federal Election Campaign Act.

We would note in closing that the parties have not yet consummated a written agreement in respect of this matter, pending the outcome of an Advisory Opinion Request. The state of their negotiations is reflected in our correspondence to the Commission, through and including this letter. They will not consummate this transaction if it is disapproved by the Commission; the parties will go forward only with a transaction which complies with all the conditions, requirements, and other guidelines contained in any ensuing Advisory Opinion.

The business arrangement proposed in this Advisory Opinion Request appears unique. Consequently, the parties wish to have the Commission's blessing as well as its guidelines before going forward. I trust this information supplements our original letter satisfactorily, but if you require any additional information or further amplification we will be pleased to provide it. Thank you for your assistance in this matter.

Sincerely,



GORDON M. STRAUSS

GMS/pd/dy5