

The following Attorney General Advisory Opinion concerns application of N.J.S.A. 10:34-32, N.J.S.A. 19:34-45, or both. The Commission is not responsible for administration of N.J.S.A. 19:34-32, Contributions by insurance corporations, or N.J.S.A. 19:34-45, Contributions by certain corporations. These Sections of the law concern prohibitions on contributions by certain corporations and are under the jurisdiction of the Office of the Attorney General. Therefore, this opinion issued by the Attorney General is supplied for informational purposes, and the Commission is not able to interpret or provide advice concerning this opinion.



A0 03-2000

State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
RICHARD J. HUGHES JUSTICE COMPLEX
25 MARKET STREET
PO BOX 112
TRENTON, NJ 08625-0112
E-Mail: scheilew@law.dol.lps.state.nj.us

DAVID SAMSON
Attorney General

DOUGLAS K. WOLFSON
*Assistant Attorney General
Director*

JAMES E. MCGREEVEY
Governor

(609) 292-3212

March 14, 2002

Frederick M. Herrmann, Ph.D.
Executive Director
Election Law Enforcement Commission
28 W. State Street
P.O. Box 185
Trenton, NJ 08625-0185

Re: 00-0082 -- Whether the Hertz
Corporation may Make Political
Contributions

Dear Director Herrmann:

You have asked for an opinion as to whether the Hertz Corporation is prohibited by N.J.S.A. 19:34-32 and 19:34-45 from making political contributions. For the following reasons, you are advised that the Hertz Corporation is subject to the prohibition contained in these statutes.

This matter stems from a request for advice submitted to ELEC on behalf of the Hertz Corporation (Hertz) by Mary Kathryn Roberts, Esq. According to Ms. Roberts, Hertz is engaged in the car rental business and does not own or hold the majority of stock in any regulated corporation covered by N.J.S.A. 19:34-45. In 1994, Hertz became an indirect wholly-owned subsidiary of Ford Motor Company. Ms. Roberts states that Ford owns approximately 95% of the voting power of all outstanding Hertz common stock, and is therefore able to exercise controlling influence over the business and affairs of Hertz.

Ms. Roberts further indicates Ford also owns a subsidiary known as Ford Motor Credit Company (Ford Credit). Ford Credit and its subsidiaries provide financing and capital loans to Ford retail

dealerships. Ford Credit also conducts insurance operations through the American Road Insurance Company.

N.J.S.A. 19:34-32 prohibits insurance companies from making contributions for any political purpose. In addition, N.J.S.A. 19:34-45 provides:

No corporation carrying on the business of a bank, savings bank, co-operative bank, trust, trustee, savings indemnity, safe deposit, insurance, railroad, street railways, telephone, telegraph, gas, electric light, heat or power, canal or aqueduct company, or having the right to condemn land, or to exercise franchises ... and no corporation, person, trustee or trustees, owning or holding the majority of stock in any such corporation, shall pay or contribute money or thing of value in order to aid or promote the nomination or election of any person, or in order to aid or promote the interest, success or defeat of any political party.

These statutory provisions were the subject of Attorney General Formal Opinion No. 4 (1983). In this opinion, the Attorney General stated that it was the intent of the Legislature "to insulate elected officials from the influence of regulated industries." The opinion emphasized that each business listed in N.J.S.A. 19:34-45 is "strongly affected with a public interest" and "has been made the subject of extensive and pervasive government regulation." According to the opinion, the statute prohibits political contributions by these industries, which could create "political debt[s]" that might be repaid by granting "unduly favorable regulatory treatment" to the contributing companies. N.J.S.A. 19:34-45 "further[s] the important governmental interest in insuring that organizations which amass great wealth in the economic marketplace do not gain an unfair advantage in the political marketplace." Attorney General Opinion 89-0141, Request for Advisory Opinion from New Jersey Election Law Enforcement Commission (Mobil Oil Corp.), quoting Federal Election Commission v. Massachusetts Citizens for Life, Inc., 479 U.S. 238, 256-57, 107 S.Ct. 616, 626, 631, 93 L.Ed.2d 539, 55-56 (1986).

Hertz does not dispute that Ford Credit, which engages in financing and insurance operations in New Jersey, is covered by the restrictions of N.J.S.A. 19:34-32 and 19:34-45. It asks whether the prohibition applicable to Ford Credit extends to bar Hertz from

making political contributions. In this regard, Ms. Roberts indicates that Hertz and Ford Credit are completely separate business entities. Their only connection is that they are both subsidiaries of Ford.

In interpreting N.J.S.A. 19:34-32 and 19:34-45, the Attorney General has consistently determined that the coverage of one subsidiary by these statutes operates to bar all other subsidiaries in the same corporate family from making political contributions. In Formal Opinion No. 4 (1983), the Attorney General considered whether a holding corporation which owned the stock of an insurance company, as well as the non-insurance subsidiary of the holding corporation, were barred from making political contributions by N.J.S.A. 19:34-32 and 19:34-45. The Attorney General determined that "a non-insurance holding corporation owning a majority of stock in an insurance company licensed to do business in this state is prohibited from making political contributions either in its own right or through its non-insurance subsidiary corporations." (Emphasis supplied).

The Attorney General reasoned that in view of the legislative intent to insulate elective officials from the influence of regulated industries, "the statutory ban on political contributions by a corporation holding a majority interest in a regulated company embraces any subsidiary in which the holding corporation has a controlling interest." The opinion noted that the holding company could influence all operations of its subsidiary corporations, including their political expenditures. The opinion therefore concluded:

Political contributions, whether paid by a corporation holding the majority interest in an insurance company or by any of its wholly owned or controlled subsidiaries could create a political debt. The repayment of such a debt may take the form of unduly favorable regulatory treatment of the insurance company. To permit the "sister" subsidiary to make these political contributions would allow the holding company to do indirectly that which it is forbidden to do directly.

Subsequent opinions of the Attorney General have consistently applied Formal Opinion No. 4 to preclude all subsidiaries of a corporation from making political contributions where only one subsidiary is an entity covered by N.J.S.A. 19:34-45. See Opinion No. 89-0141 (May 11, 1990); Opinion No. 89-0184

March 14, 2002

Page 4

(May 11, 1990); Request for Advisory Opinion from New Jersey Election Law Enforcement Commission (August 30, 1988) (copies attached).

The rule established in the foregoing opinions squarely applies to the present situation. Since Ford Motor Company owns Ford Credit, a corporation covered by N.J.S.A. 19:34-32 and 19:34-45, Ford and all of its subsidiaries are barred from making political contributions. As a result, Hertz, a wholly owned subsidiary of Ford, may not make political contributions.

It should be noted that although Hertz is barred from making political contributions, the statutes do not preclude it from establishing a continuing political action committee, through which its employees may make political contributions. Such a committee is valid as long as the employees' contributions are made voluntarily and the corporation's funds are not used to establish, administer or solicit contributions for the committee. See Attorney General Formal Opinion No. 14 (1979).

In conclusion, you are advised that Hertz is prohibited by N.J.S.A. 19:34-32 and 19:34-45 from making political contributions.

Sincerely yours,

DAVID SAMSON
ATTORNEY GENERAL OF NEW JERSEY

By: _____


Lewis A. Scheindlin
Deputy Attorney General

LAS/kc

DUPLICATE

JUL 26 2000

Advisory Opinion Request No. 03-2000



ADVISORY OPINION REQUEST

A person, committee or entity subject to, or reasonably believing he, she or it may be subject to, any provision or requirement of the Campaign Reporting Act may request that the Commission provide an advisory opinion pursuant to N.J.S.A. 19:44A-6. Such request must be in writing (please type or print) and must include the following:

1. This request for an Advisory Opinion is being submitted on behalf of:

Full Name of Person, Committee or Entity

The Hertz Corporation

Mailing Address
225 Brae Boulevard

Day Telephone No.
(201) 307-2662

Park Ridge, NJ 07656

Evening Telephone No.

2. Indicate if the above named person, committee or entity currently files reports with the Commission:

Yes

No

a. If yes, indicate in what capacity it is filing:

- | | | | |
|----------------------------------|--------------------------|---|--------------------------|
| Candidate committee | <input type="checkbox"/> | Recall committee | <input type="checkbox"/> |
| Joint candidates committee | <input type="checkbox"/> | Recall defense committee | <input type="checkbox"/> |
| Political committee | <input type="checkbox"/> | Lobbyist | <input type="checkbox"/> |
| Continuing political committee | <input type="checkbox"/> | Legislative agent | <input type="checkbox"/> |
| Political party committee | <input type="checkbox"/> | Personal financial disclosure statement | <input type="checkbox"/> |
| Legislative leadership committee | <input type="checkbox"/> | Other (please describe): _____ | <input type="checkbox"/> |

b. If no, indicate if the above named person, committee or entity has in the past filed reports with the Commission, giving elections (i.e., 1992 general election) or calendar years, and identify filing capacity:

No

c. If reports are or were filed under a different name than that appearing in 1 above, provide that name:

3. Please provide below a statement of the cognizable question of law arising under the Campaign Reporting Act, including specific citations to pertinent sections of the Campaign Reporting Act and Commission regulations (if known). Whether Hertz may make political contributions

to candidates for elective office in New Jersey given that its corporate parent owns a subsidiary that may be a regulated entity in New Jersey pursuant to N.J.S.A. 19:34-32 and 19:34-45.

5. Please provide below a statement of the result that the person, committee, or entity seeks, and a statement of the reasoning supporting that result.

Hertz would like to make political contributions and to campaigns for and against public questions in New Jersey. Hertz does not own a regulated company and has no control over the operations of a regulated company. Each of the companies function as completely separate business entities and only share the same corporate parent. This question will impact many similarly situated companies in New Jersey.

6. Person who is submitting request on behalf of committee or entity listed in Item 1 above:

Full Name:
Mary Kathryn Roberts, Esq.

Mailing Address:
50 West State Street, Suite 1010
Trenton, NJ 08608

Day Telephone No.
(609) 396-2121

Evening Telephone No.

Fax Number:
(609) 396-4578

a. Official Capacity of Person Requesting Opinion:

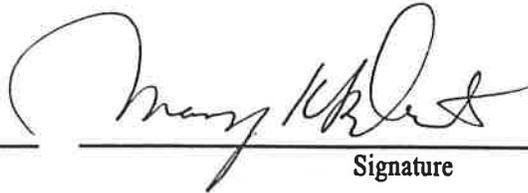
- Candidate
- Treasurer
- Organizational Treasurer
- New Jersey Attorney representing requesting person, committee or entity
- Other (please describe): _____

7. I hereby consent to an extension of the 10-day response period provided in N.J.S.A. 19:44A-6f to a 30-day period for Commission response, which period shall start on the date of Commission receipt of the completed advisory opinion request. (CROSS OUT THIS PARAGRAPH IF CONSENT IS WITHHELD).

8. A request for an advisory opinion will not be considered filed until a fully completed and signed application is received by the Commission.

July 6, 2000

Dated:



Signature

**RIKER, DANZIG, SCHERER,
HYLAND & PERRETTI LLP**

HEADQUARTERS PLAZA
ONE SPEEDWELL AVENUE
PO BOX 1981
MORRISTOWN, NEW JERSEY 07962-1981
(973) 538-0800
FAX (973) 538-1984

50 WEST STATE STREET
SUITE 1010
TRENTON, NEW JERSEY 08608-1220
(609) 396-2121
FAX (609) 396-4578

IRVING RIKER (1921-1956)
CHARLES DANZIG (1934-1992)

BENJAMIN P. MICHEL
GERALD A. LILOIA
JOHN P. SHERIDAN, JR.
JAMES S. ROTHSCHILD, JR.
VINCENT J. SHARKEY, JR.
DENNIS J. O'GRADY
MICHAEL K. FUREY
GARY E. WALSH
ROBERT D. BORTECK
EDWARD K. DEMOPE
SHAWN L. KELLY

NANCY STEWART
JUDITH J. SULLIVAN
JAMES A. RABORN
STEPHANE D. EDELSON
NANCY C. EBERHARDT
HAROLD L. KOFGAN
SCOTT A. OHNEGIAN
HAROLD S. ATLAS
JOSEPH L. SCHWARTZ
CATHLEEN H. GIULIANA
BRUCE A. HARRIS
CRAIG L. STEINFELD
JAMES L. LOTT, JR.
KEITH J. WEINGOLD
THOMAS J. PERRY
LARISA V.K. GJIVOJE
EDWIN F. CHOCIEY, JR.
KELLY STRANGE CRAWFORD
JACQUELINE F. MCGOWAN
LESLIE GLADSTONE RESTAINO
DAVID L. ISABEL

MARK S. RATTNER
DENNIS J. KRUMHOLZ
ALAN E. KRAUS
GLENN A. CLARK
ROBERT J. SCHOENBERG
MARYANN P. KICENUK
SAMUEL P. MOULTHROP
VICTORIA A. MORRISON
ANDREW J. STAMELMAN
KENNETH M. VAN DEVENTER
JAN L. BERNSTEIN
SIGRID S. FRANZBLAU
ANNE M. PATTERSON
JOHN M. PELLECCIA
ANTHONY J. SYLVESTER
PETER C. HARVEY

RONALD D. PUMALA
JEFFREY J. BROOKNER
RANDALL K. PACKER
LANCE J. KALIK
MARY ELLEN BURKE
JOHN S. MAIRO
MARCIA ANN MILLER
LISA SANTAPIETRO
KATHERINE H. WIGNESS
MARC D'ANGIOLILLO
JACK SHERIDAN
ANDREA J. GIANNETTA
MICHAEL J. LOESBERG
ALFRED J. SARGENTE
ALEXA RICHMAN-LA LONDE
BRETT M. REWA
CRAIG H. FELDMAN
LYNN A. LURIE
SARAH L. KAMBOUR
R.N. TENDAI RICHARDS

GLENN D. CURVING
ROBERT J. GILSON
JEFFREY B. WAGENBACH
WARREN J. MARTIN JR.
SANDRA BROWN SHERMAN
NICHOLAS RACIOPPI, JR.
ROBERT C. DALEO
JAMES C. MEYER
BRIAN E. O'DONNELL
JULIAN W. WELLS
STUART M. LEDERMAN
MARILYNN R. GREENBERG
MICHAEL R. O'DONNELL
ANTHONY J. ZARILLO, JR.
WILLIAM G. CONNOLLY
MARY KATHRYN ROBERTS

CAROL CESPEDES
STEVEN T. SENIOR
CHRISTOPHER C. ASH
JENNIFER L. SMILES
KEVIN J. O'CONNOR
MICHAEL H. WILCK
NOAH FRANZBLAU
BETH ANN STEMMLER
KAREN M. KOZLOWSKI
DEBRA D. TEDESCO
NINA G. HOLBROOK
DAVID R. HAUSHANN
RICHARD S. KOHN
SANDRA HALL MULRAIN
RICHARD E. HAMILTON
KEENA M. HACKAY
MATTHEW H. LEWIS
CRAIG S. DENARESKI
BRAD M. KAPLAN
DAHESH D. PATEL

EVERETT M. SCHERER
WILLIAM F. HYLAND
PETER N. PERRETTI, JR.
WILLIAM C. CONNELLY
EDWARD A. ZUNZ, JR.
PETER L. BERKLEY
SIDNEY M. SCHREIBER
STEWART G. POLLOCK
PETER F. ELD
OF COUNSEL

CHARLES F. WASKEVICH, JR.
LINDA H. PRENTISS
RICHARD D. SANDERS
JAMES A. HARKNESS
RAFAEL PEREZ
J. ALEX KRESS
DOUGLAS A. SATZGER*
ROBERT I. PEARLMAN
COUNSEL

ANDREW M. CONTRERAS
TODD E. JULIAN
MAHA F. MUNAYYER
DORIT T. ROBBINS
KEITH D. BARRACK
ERIC BLUMENFELD
KRIS ANN E. CAPPELLUTI
ROBERT L. LEHANE
THOMAS J. CASTANO
DAVID M. STEINER
KATHERINE INGRASSIA
MICHAEL A. SCHMERLING
CAROLINE BRIZZOLARA
SCOTT M. CERNICH
SCOTT G. COLLINS
ANANYA DASH
JENNIFER GAETA
MARK P. LUEDEKE
KEVIN F. MURPHY
DAVID S. NOBLE
CURTIS M. PLAZA
FRANK T. SUTTON*

*NY BAR ONLY

June 28, 2000

VIA HAND DELIVERY

Gregory E. Nagy, Legal Director
Election Law Enforcement Commission
28 West State Street, 13th Floor
P.O. Box 185
Trenton, New Jersey 08625-0185

Re: Advisory Opinion Request

Dear Director Nagy:

Please accept this letter as a request for an Advisory Opinion on behalf of The Hertz Corporation ("Hertz") regarding the proper application and interpretation of N.J.S.A. 19:34-32 and -45 pursuant to N.J.S.A. 19:44A-6. We have been authorized to represent Hertz in this matter. We recognize that the Election Law Enforcement Commission ("ELEC") does not have jurisdiction to issue advisory opinions which interpret these statutory provisions and respectfully request that ELEC refer this matter to the Attorney General's office for its consideration.

Specifically, Hertz wishes to know whether it may lawfully make political contributions in New Jersey, as that term is defined in N.J.S.A. 19:44A-3(d), considering that its corporate parent, Ford Motor Company ("Ford"), indirectly owns a separate subsidiary, Ford Motor Credit Company ("Ford Credit"), which is likely covered by the prohibition against making such contributions set forth at N.J.S.A. 19:34-32 and -45. Over a decade ago, Hertz made a number of political contributions in New Jersey which occurred prior to Hertz'

2000 JUN 28 PM 1:16

Mr. Gregory E. Nagy

June 28, 2000

Page 2

acquisition by Ford.

Hertz is a Delaware corporation domiciled in and qualified to do business in New Jersey. Hertz and its affiliates and independent licensees operate what it believes is the largest car rental business in the world based upon revenues. In addition, the company also leases industrial and construction equipment. Hertz does business throughout the United States, including New Jersey, and in approximately 140 foreign countries and jurisdictions. Hertz is a publicly traded corporation which does not own or hold the majority of stock in any regulated corporation as defined by N.J.S.A. 19:34-32 and -45. The wholly-owned subsidiaries of Hertz include Hertz Equipment Rental Corporation, which rents construction and industrial equipment; Hertz Claim Management Corporation, which provides claim administration services to Hertz and outside customers; and Hertz Technologies, Inc., which markets telecommunications services. Neither Hertz nor any of its subsidiaries engage in any of the activities listed in N.J.S.A. 19:34-32 or -45.

In 1994, Hertz became an indirect wholly-owned subsidiary of Ford. Ford is a Delaware corporation domiciled in Michigan and owns approximately 95% of the combined voting power of all outstanding Hertz common stock. Ford is able to direct the election of all members of Hertz's Board of Directors and exercise a controlling influence over its business and affairs.

Ford also indirectly owns all of the outstanding stock of Ford Credit. Ford Credit is one of the largest companies in the world dedicated to automotive finance. It is incorporated in Delaware and domiciled in Michigan and operates in New Jersey. Ford Credit and its subsidiaries provide wholesale financing and capital loans to Ford retail dealerships and associated non-Ford dealerships throughout the world, most of which are privately owned and financed, and purchase retail installment sale contracts and retain leases from them. Ford Credit also makes loans to vehicle leasing companies, most of which are affiliated with Ford dealerships. Ford Credit also conducts insurance operations through The American Road Insurance Company ("American Road") and its subsidiaries in the United States and Canada. American Road's business primarily consists of providing extended service plan contracts for new and used vehicles primarily originating from Ford dealers, physical damage insurance covering vehicles financed at wholesale by Ford Credit, and the reinsurance of credit life and credit disability insurance for retail purchasers of vehicles. For purposes of this advisory opinion request, we reasonably believe that Ford Credit may be a regulated entity prohibited from making political contributions under New Jersey law.

Hertz would like to make contributions to candidates for elective office in New Jersey. Hertz potentially might also contribute to campaigns for and against public questions in New Jersey. This advisory opinion request seeks a determination as to whether Hertz may do so,

Mr. Gregory E. Nagy
June 28, 2000
Page 3

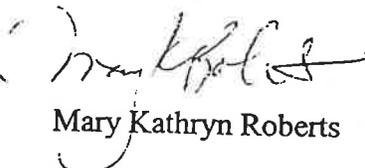
given that its corporate parent owns a subsidiary that may be a regulated entity in New Jersey.

Hertz and Ford Credit are governed by separate boards of directors and separate corporate officers. There are no Hertz senior officers, directors or employees serving on Ford Credit's Board of Directors, and there are no senior officers, directors or employees of Ford Credit serving on Hertz's Board of Directors. As noted above, Hertz and Ford Credit share a corporate parent in Ford. However, both companies function as completely separate business entities. Hertz does not have any ownership interest in Ford Credit, nor does Ford Credit have any ownership interest in Hertz. Hertz is a publicly traded company, answerable to shareholders other than Ford or Ford Credit.

Please note that Hertz would take all necessary steps to establish an appropriate shield between the Board of Directors and the company's process for choosing candidates for contributions.

Thank you for considering our request. Please contact me in the firm's Trenton office if you have any questions regarding this matter.

Very truly yours,



Mary Kathryn Roberts