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RESIDENT PARTNERS

November 19, 1962

Committee for Constitutional Government, Inc.  
117 Liberty Street  
New York 6, New York

Dear Sirs:

You have requested our opinion, on the basis of the facts stated below, as to whether a Foundation, which itself is exempt from Federal income tax under Section 501 (c)(3) of the Internal Revenue Code, would jeopardize its exempt status if it purchased from the Committee fiber covered copies of a book by Thomas James Norton entitled "The Constitution of the United States" at the regular price of \$1.50 per volume for free distribution to educational institutions.

The Committee for Constitutional Government, Inc. (hereinafter called the "Committee") is a District of Columbia corporation. This corporation is exempt from Federal income tax as a civic league under Section 501 (c)(4), Internal Revenue Code 1954. It is not operated for profit. However, the Internal Revenue Service has ruled that contributions to the Committee are not deductible as contributions by individuals and corporations for Federal income tax purposes, since the Committee does not qualify under Section 501 (c)(3).

One important function of the Committee is the free distribution and the sale of the book referred to above. This book is in the nature of a textbook explaining the Constitution of the United States and is used as a textbook by many schools, colleges and other organizations. The Committee gets many requests for donations of the book from educational institutions, with which it cannot comply because of lack of funds. The book merely sets forth and discusses the provisions and meaning of the various provisions of the Constitution of the United States as it now reads and has no political or propaganda aspects.

In our opinion a Foundation, or other organization, exempt from Federal income tax under Section 501 (c)(3), would not jeopardize its exempt status if it purchased these books from the Committee for the purpose of making gifts thereof to educational institutions which would themselves qualify as proper donees of gifts by such Foundation.

Our reasoning is as follows:

The exempt Foundation must, of course, be operated exclusively for its tax

exempt purposes with no substantial other activities and probably could not properly make substantial gifts to the Committee. See Reg. Sec. 1.501(c)(1).

The Foundation can properly use an agent to distribute its contributions in cash or property to charitable organizations. Rev. Rul. 55-1, 1955-1 C.B. 26. The Foundation must in fact act through some particular individuals as officers, trustees, employees or agents.

Such an exempt Foundation can and necessarily must deal with non-tax exempt and commercial enterprises in many cases to carry out its charitable or educational activities. This is particularly true if the objective is to distribute educational materials to schools and colleges. In such case the Foundation can properly pay someone for producing, printing and distributing such educational materials so long as the funds of the Foundation are not being used in substance to subsidize the operations of the commercial or non-exempt enterprises with which it deals. Scientific and Research Foundation, Inc. v. United States, 60-1 U.S.T.C. 9252, (D.C. Ill. 1960).

Hence, it seems entirely clear that a tax-exempt Foundation, one of the proper functions of which is the preparation and dissemination of educational materials to schools and colleges, can purchase from the Committee at a reasonable price, copies of the book in question and distribute such book to colleges and other educational institutions selected by it without jeopardizing its non-exemption from the Federal income tax.

The remaining question is whether the Foundation, instead of itself taking delivery of and distributing the books purchased by it to educational institutions, can direct the Committee to distribute the same books to educational institutions specified or approved by the Foundation; so that distribution and mailing is done by the Committee, which is better equipped to do this work than most Foundations. We see no reason why the distribution of the books may not properly be left to the Committee. The Foundation is still itself making contributions to appropriate donees in furtherance of its proper objectives of the books purchased by it. Nor do we see any reason why the Committee cannot make recommendations to the Foundations as to the educational institutions to receive the books.

We understand that the price of \$1.50 per volume which the Committee will charge the Foundations for these books is a reasonable price and is the same as the price at which the Committee sells to others.

Under these circumstances, there would seem to be no basis for any claim that the Foundation was in any way subsidizing the other activities of the Committee. The situation would be exactly the same as if the Foundation had purchased the books on the same basis from a commercial enterprise. The essence of the transaction is that the Foundation is purchasing these books for distribution on its own behalf to educational institutions, an entirely proper function for such Foundation. The fact that the Committee does the mailing of the books to educational institutions selected or approved by the Foundation does not change the nature of the transaction.

On the same basis of reasoning, an individual or corporate taxpayer who wished to make a gift of copies of this book to an educational institution could do so by purchasing the books from the Committee and having them mailed by the Committee to educational institutions designated by the individual or corporation. In claiming the deduction as a contribution to charity, within the percentage of income limit set by the statute, the individual or corporation would, of course, list the educational institution as the donee.

Yours very truly,

CLEARY, GOTTlieb, STEEN & HAMILTON

By:

