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FEDERAL ELECTION
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MAR 17 3 19 PM '99

DIRECT DIAL NUMBER:

(215) 575-7060

Stephen J. Harmelin
harmels@dilworthlaw.com

March 16, 1999

By Federal Express

Attn: Bradley Lichtfield
Associate General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

AOR 1999-08

Re: Request for Advisory Opinion re Investment
of Excess Campaign Funds

Dear Mr. Lichtfield:

In accordance with our recent telephone conversation, your e-mail correspondence, and my February 17, 1999 letter to the Commission on behalf of Citizens for Arlen Specter (the "Committee"), I am requesting a formal Advisory Opinion from the Commission, pursuant to 2 U.S.C. § 437f(a) and 11 CFR § 112.1(a), concerning the appropriate investment of the Committee's excess campaign funds.

To recapitulate my letter of February 17th, in 1998 Senator Arlen Specter of Pennsylvania was elected to his fourth term in the United States Senate. I am the Committee's Treasurer, and do not anticipate any significant expenditures until 2003, when the Senator may seek reelection to a fifth term. Until recently, all funds remaining from Senator Specter's 1998 reelection campaign were maintained in a Merrill Lynch money market account earning a return equivalent to the overnight interest rate paid on federal funds transactions. In light of both the length of time the funds will be available for investment and the alternative opportunities available in today's economy, I determined that the investment of the Committee's funds should be prudently diversified to extend to mutual funds and similar investments earning a substantially greater rate of return.

Accordingly, I am placing the Committee's excess funds with the Vanguard Group's family of mutual and bond funds, with the Committee's initial investment to be allocated among Vanguard's Prime Money Market Fund, GNMA Fund, United States Growth Fund, Selected Value Fund, and Intermediate-Term Tax-Exempt Municipal Bond Fund. Vanguard has informed me that the annual expenses associated with maintaining these investments will not exceed 1% of the Committee's total portfolio. Based on my evaluation of current and future market trends, I

will determine the specific Vanguard funds (and appropriate allocation) in which the Committee's excess funds will be invested.

In addition, to avoid any potential conflict or appearance of a conflict of interest, Senator Specter has instructed that although the Committee's excess funds should be invested prudently with the Vanguard Group, neither he nor members of his staff should be informed of the specific investments maintained by the Vanguard funds that I have selected. I will however keep the Senator periodically informed as to the performance of the Committee's portfolio. Consistent with applicable law, expenses incurred through the Committee's investments with the Vanguard Group will be reported as expenditures of the Committee and paid through its depository account, the reporting of all investment fund returns shall identify the specific fund that is the source of the return, and no expenditure of the Committee shall be made directly from the Vanguard investment account.

Prior to contacting Vanguard, I reviewed the Federal Election Code, the Regulations promulgated pursuant to the Code, and relevant Advisory Opinions to ascertain whether the investment of excess campaign funds in mutual and bond funds complied with applicable law and regulation. I determined that the Regulations expressly authorize the investment of campaign funds. 11 CFR § 103.3(a) ("[f]unds may be transferred from the depository for investment purposes, but shall be returned to the depository before such funds are used to make expenditures"). *See also* 11 CFR 104.3(a)(1) (defining "cash on hand" to include "certificates of deposit, treasury bills and any other committee investments valued at cost"). Since 1975 the Commission has approved of the investment of campaign funds in a variety of investment vehicles, including government securities and money-market funds (Advisory Opinion 1997-6), a cash management account maintained by an investment and brokerage firm (Advisory Opinion 1986-18), "an open-end, diversified investment trust which is a professionally managed money fund" (Advisory Opinion 1980-39), and in interest bearing bank accounts or government treasury notes (Advisory Opinion 1975-41).

My research nonetheless failed to reveal any Advisory Opinion specifically approving the investment of excess campaign funds in mutual or bond funds of the type offered by the Vanguard Group and described above. Accordingly, pursuant to 2 U.S.C. § 437f(a) and 11 CFR § 112.1(a), I request that the Commission issue an Advisory Opinion addressing whether the investments described herein are consistent with the Federal Election Code and the Regulations promulgated by the Commission.

Very truly yours,
Citizens for Arlen Specter



By: Stephen J. Harmelin
Treasurer

cc: Senator Arlen Specter

Subject: Letter dated February 17, 1999 to FEC
Date: Mon, 22 Feb 1999 12:45:59 -0500
From: Bradley Litchfield <brlitch@fec.gov>
Organization: Federal Election Commission
To: Harmelsj@dilworthlaw.com

Mr. Harmelin:

I have today received the subject letter on behalf of Citizens for Arlen Specter which was addressed to Chairman Scott E. Thomas of the FEC.

I called your listed direct dial # moments ago (215-575-7060) and learned that you are away from the office and will not return until March 2. I need to clarify two matters with you.


Did you intend that the subject letter be treated as a request for an advisory opinion from the Commission under 2 USC 437f and 11 CFR Part 112. I presume so, but you did not use explicit language saying that. Instead you ask more generally for "Commission guidance." If the committee is seeking an advisory opinion, please indicate same expressly.

If your inquiry is intended to be an advisory opinion request, you will need to provide additional comment and information. Please explain and clarify the disclosures the committee would propose make on its filed FECA reports in the event it receives dividends, interest or other income from its various types of investments, or if it receives some capital gain from the sale of any investment it may hold for some period of time.

Your letter states that some portion of the committee's funds will be "invested under the discretion of a registered securities advisor." The letter further explains that Senator Specter has given instructions that he and members of his staff should not be informed of the identity of "any specific investment fund or entity." This implies that the committee will not disclose on its filed FECA reports, which become public documents, the identity of any entity from which the committee may receive dividends or investment gains (e.g. from sales/transfers) in excess of a \$200 aggregate amount per payor within the same calendar year. See 2 USC 434(b)(3)(G), 11 CFR 104.3(a)(4)(vi).

Please explain and clarify the extent to which the committee proposes to disclose, or not disclose, the information specified in the cited provisions of law. An illustrative example or two may be helpful to include within your explanation.

If you have questions about the advisory opinion process or this letter, please call me (202-694-1650) or send an email (brlitch@fec.gov) or first class mail. Thank you.


Bradley Litchfield
Associate General Counsel/Policy
Federal Election Commission

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COUNSEL

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DIRECT DIAL NUMBER:
(215) 575-7060

DILWORTH PAXSON LLP

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FEB 19 4 18 PM '99

Stephen J. Harmelin

February 17, 1999

Mr. Scott E. Thomas
Chairman
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

Re: Request for Confirmation of
Campaign Funds Investment Program

Dear Chairman Thomas:

In 1998 Senator Arlen Specter of Pennsylvania was elected to his fourth term in the United States Senate. I am the Treasurer of Citizens for Arlen Specter (the "Committee") and request the Commission's guidance with respect to the investment of funds remaining from Senator Specter's last election campaign.

The Committee does not anticipate any significant expenditures until 2003, when the Senator may seek reelection to a fifth term. Until recently, all the funds remaining from Senator Specter's 1998 reelection campaign were maintained in a Merrill Lynch money market account earning a return equivalent to the overnight interest rate paid on federal funds transactions. I determined that in light of both the length of time the funds will be available for investment and the alternative opportunities available in today's economy, the investment of the Committee's funds should be prudently diversified to include not only money market funds, but bonds, equity securities, mutual funds, annuities and similar investments earning a substantially greater rate of return. Some of the funds have been placed in a Vanguard balanced mutual fund. Another portion are being invested under the discretion of a registered securities advisor.

In addition, to avoid any potential conflict or appearance of a conflict of interest, Senator Specter has instructed that while the funds must be invested prudently, neither he nor members of his staff should be informed of the identity of any specific investment fund or entity. Accordingly, the investment advisor with whom the funds have been placed has been instructed to disclose the specific investments to myself alone, and not to the Senator or his staff. I will however keep the Senator periodically informed as to the

investment performance of the portfolio. Consistent with applicable law, expenses incurred by the investment advisor will be reported as expenditures of the Committee and paid through its depository account, all returns on the Committee's investments shall be reported as such, and no expenditures of the Committee will be made directly from the investment account.

Prior to placing the funds with the investment advisor, I reviewed the Federal Election Code, the Regulations, and the Commission's Advisory Opinions. The Regulations expressly authorize the investment of campaign funds. 11 CFR § 103.3(a) ("[f]unds may be transferred from the depository for investment purposes, but shall be returned to the depository before such funds are used to make expenditures"). See also 11 CFR 104.3(a)(1) (defining "cash on hand" to include "certificates of deposit, treasury bills and any other committee investments valued at cost"). Since 1975 the Commission has approved of the investment of campaign funds in a variety of investment vehicles. See Advisory Opinion 1997-6 (implicitly approving investment in government securities and money-market funds); Advisory Opinion 1986-18 (approving investment of campaign funds in a cash management account maintained by investment and brokerage firm); Advisory Opinion 1980-39 (approving investment of campaign funds in "an open-end, diversified investment trust which is a professionally managed money fund"); Advisory Opinion 1975-41 (approving investment of campaign funds in interest bearing bank accounts or government treasury notes).

Accordingly, I concluded that the prudent diversification of the Committee's assets was wholly consistent with applicable law, the Senate Ethics Rules, and my obligation as a fiduciary of the Committee's assets and thus exercised my discretionary authority to make the investments described above. Out of an abundance of caution, I am writing to request the Commission's guidance with respect to any specific investments and whether it considers any aspect of the actions described above to be otherwise than in full accordance with applicable law.

Very truly yours,

~~Citizen~~ for Arlen Specter



By: Stephen J. Harmelin
Treasurer