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FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 8, 1999

AGENDA ITEM
For Meeting of: 4-15-99

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon
Acting Staff Director 

FROM: Lawrence M. Noble
General Counsel 

N. Bradley Litchfield
Associate General Counsel 

Jonathan M. Levin 
Senior Attorney

SUBJECT: Draft AO 1999-8

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for April 15, 1999.

Attachment

1 ADVISORY OPINION 1999-8

2
3 Stephen J. Harmelin
4 Dilworth Paxon LLP
5 3200 Mellon Bank Center
6 1735 Market Street
7 Philadelphia, PA 19103-7595

DRAFT

8
9 Dear Mr. Harmelin:

10
11 This responds to your letters dated March 16 and February 17, 1999, on behalf of
12 Citizens for Arlen Specter ("the Committee"), requesting an advisory opinion concerning
13 the application of the Federal Election Campaign Act of 1971, as amended ("the Act"),
14 and Commission regulations to the investment of Committee funds.

15 The Committee was the principal campaign committee of Senator Arlen Specter
16 for his 1998 re-election campaign, and Senator Specter has so designated it for a possible
17 2004 re-election campaign. You are the Committee's treasurer, and do not anticipate any
18 significant expenditures until 2003 when the Senator may seek re-election. Until
19 recently, all funds remaining from the 1998 campaign were maintained in a Merrill Lynch
20 money market account earning a return equivalent to the overnight interest rate paid on
21 federal funds transactions. In view of the length of time the funds will be available for
22 investment and the alternative opportunities available in today's economy, you have
23 determined that the investment of the Committee's funds should be prudently diversified
24 to extend to mutual funds and similar investments earning a substantially greater rate of
25 return.

26 Accordingly, you are placing the Committee's excess funds with the Vanguard
27 Group's family of mutual and bond funds, with the initial investment to be allocated
28 among Vanguard's Prime Money Market Fund, GNMA Fund, United States Growth
29 Fund, Selected Value Fund, and Intermediate-Term Tax-Exempt Municipal Bond Fund.
30 Vanguard has informed you that there will be annual expenses, not exceeding one percent
31 of the Committee's portfolio, for the maintenance of the investments. Based on your
32 evaluation of market trends, you will determine the specific Vanguard funds in which to
33 invest and the appropriate allocation of the investments.

1 You state that, to avoid any potential conflict of interest or appearance thereof,
2 Senator Specter has instructed that, although the excess funds should be invested with
3 Vanguard, neither he “nor members of his staff” should be informed of the specific
4 Vanguard funds selected. You state, however, that expenses incurred through the
5 Committee’s investments with the Vanguard Group will be reported as expenditures of
6 the Committee and paid through its depository account, the reporting of the investment
7 fund returns will identify the specific fund that is the source of the return, and no
8 expenditure of the Committee will be made directly from the Vanguard investment
9 account. You ask whether the Committee may invest funds in mutual or bond funds of
10 the type described above.

11 The Act and Commission regulations require that each political committee
12 designate at least one State bank, Federally chartered depository institution, or depository
13 institution the accounts of which are insured by the Federal Deposit Insurance
14 Corporation or the National Credit Union Administration, as its campaign depository.
15 All funds received by a political committee must be deposited in the checking account or
16 other accounts maintained in its campaign depository. 2 U.S.C. §432(h)(1); 11 CFR
17 103.2 and 103.3(a). No disbursements, other than petty cash, may be made by such
18 committee except by check or similar draft drawn on those accounts. 2 U.S.C.
19 §432(h)(1) and (2); 11 CFR 102.10 and 102.11.

20 Nevertheless, Commission regulations specifically provide that political
21 committees may transfer funds from the depository for investment purposes. 11 CFR
22 103.3(a). Moreover, the regulations contemplate a variety of such investments in
23 describing cash on hand to include “certificates of deposits, treasury bills and any other
24 committee investments valued at cost,” and in requiring that committees report other
25 receipts “such as dividends and interest.” 11 CFR 104.3(a)(1), (a)(3)(x), and (a)(4)(vi);
26 see also 2 U.S.C. §434(b)(2)(J) and 434(b)(3)(G). In advisory opinions, the Commission
27 has also permitted the investment of political committee funds in a variety of investment
28 vehicles. These have included government securities and money market funds (Advisory
29 Opinion 1997-6); a cash management account maintained by an investment and
30 brokerage firm (which could contain money market funds, U.S. Government obligations,

1 or other securities) (Advisory Opinion 1986-18); and “an open-end, diversified
2 investment trust which is a professionally managed money market fund” (Advisory
3 Opinion 1980-39).¹

4 The ability of a committee to transfer funds to other investment accounts is
5 conditioned, however, by the requirement that these funds must be returned to the
6 campaign depository account before they can be used to make expenditures. 11 CFR
7 103.3(a); Advisory Opinions 1997-6, 1986-18, and 1980-39. The Commission has
8 narrowly modified this requirement with respect to interest or other income earned by and
9 credited to a committee’s investment accounts with a securities firm that is automatically
10 and directly reinvested in the investments held in the account. Although such income
11 should be reported as an “other receipt” by a committee to reflect when it is credited, the
12 amounts do not need to be deposited in the campaign depository account in view of the
13 fact that the reinvestment of funds is merely a conversion of one form of cash on hand to
14 another, and not an expenditure. Advisory Opinion 1997-6.

15 Based on the foregoing, the Commission concludes that the Committee may
16 invest its funds in the Vanguard Group’s family of mutual and bond funds. In doing so,
17 the Committee must comply with the disclosure and other relevant provisions of the Act
18 and Commission regulations. As you have proposed, the expenses paid to Vanguard
19 Group as a result of the Committee’s investments must be reported in a timely manner as
20 operating expenditures and must be disbursed from a campaign depository account. 2
21 U.S.C. §§434(b)(4)(A) and (5)(A), 432(h)(1); 11 CFR 104.3(b)(2)(i) and (4)(i), 103.3(a).
22 The income from each of the investments, such as interest and dividends, must be
23 disclosed in a timely manner, even if such income is directly reinvested as described
24 above. Advisory Opinion 1997-6. In view of the fact that the specific funds in the
25 Vanguard investment account (e.g., the United States Growth Fund, the Selected Value
26 Fund) will be the payers of the dividends, interest, or other income, those are the entities
27 that should be identified for itemization purposes.² Finally, no committee disbursements

¹ See also Advisory Opinion 1975-41 in which the Commission permitted the investment of campaign funds in Government treasury notes.

² The Commission assumes that the Committee will receive periodic account statements from Vanguard which itemize the interest, dividends, or other returns for each of the various mutual and bond funds. The

1 may be made directly from the Vanguard account; the funds to be used must first be
2 transferred to a committee depository account.

3 The Commission expresses no opinion regarding any tax ramifications of the
4 proposed activity or the application of any rules of the U.S. Senate to the activity because
5 those issues are not within its jurisdiction.

6 This response constitutes an advisory opinion concerning application of the Act
7 and Commission regulations to the specific transaction or activity set forth in your
8 request. 2 U.S.C. §437f.

9 Sincerely,

10
11 Scott E. Thomas
12 Chairman

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14 Enclosures (AOs 1997-6, 1986-18, 1980-39, and 1975-41)
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16

Commission also notes that the Committee is obligated to retain and preserve all such statements and similar records that show the interest, dividends, or other returns credited to the account, and the expenses paid by the Committee. 11 CFR 102.9 and 104.14(b); see also Advisory Opinion 1997-6, n.2.