

ROYER, MEHLE & BABYAK

ATTORNEYS AT LAW

1747 PENNSYLVANIA AVENUE, N W
WASHINGTON, D C. 20006

(202) 296-0784

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AUTOMATIC
TELECOPIER
(202) 293-2768

OF COUNSEL
GREGORY M FISHER

November 26, 1991

Mr. N. Bradley Litchfield
Associate General Counsel
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Dear Mr. Litchfield:

I am writing to request an advisory opinion on behalf of the Friends of Senator D'Amato.

The facts which require this opinion are set forth in the attached Department of Justice letter dated November 5, 1991 which you are in receipt. This letter seems to be in conflict with the Federal Elections Commission Advisory Opinion 1984-52 which would require a conviction of the person or entity making the contribution prior to disbursement of funds.

We are seeking clarification and guidance as to when, if at all, to disperse funds when no conviction has occurred pursuant to Advisory Opinion 1984-52. To ensure compliance with any recommendations by the Commission, we have segregated the monies involved by placing them in a separate account pursuant to my discussions with your staff so that the questioned amounts will be available for disbursement if and when the Commission determines a disbursement is warranted.

The question we are presenting is whether the funds should be distributed now or kept in a segregated account until the judicial process ripens into a situation as articulated by Advisory Opinion 1984-52.

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FEDERAL ELECTION COMMISSION

ROYER, MEHLE & BABYAK

We take no position as to what course of action should be dictated or required but rather seek the Commission's guidance as to how to proceed in light of the above.

Should you require any further information do not hesitate to contact me at 202-296-0784.

Very truly yours,



Robert S. Royer

cc: U.S. Department of Justice
Friends of Senator D'Amato

RSR/dds



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

December 3, 1991

**Robert S. Royer
Royer, Mehle & Babyak
1747 Pennsylvania Ave., NW
Washington, DC 20006**

Dear Mr. Royer:

This refers to your letter dated November 26, 1991, and our telephone conversation about it on November 29, 1991.

Your letter was submitted on behalf of the Friends of Senator D'Amato, a principal campaign committee. It pertains to the possible disbursement of funds by the committee as a result of a pending criminal case under the jurisdiction of the United States Department of Justice ("DOJ").

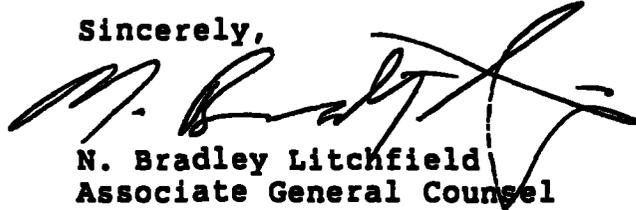
Your letter refers to a DOJ letter dated November 5, 1991, and indicates that you were enclosing a copy of that letter. As I indicated by telephone, the DOJ letter was not enclosed. That letter is an essential part of the factual situation presented by your inquiry, so it needs to be submitted if you wish to proceed with an advisory opinion request. See generally Part 112 of 11 CFR. In addition, you should explain, by letter, the specific steps or procedures the committee has taken to set aside or segregate funds into a separate bank account for the purpose of making contribution refunds. Your explanation should indicate whether the segregated funds are derived from contributions received by the 1986 D'Amato campaign committee before the 1986 general election, or from contributions made after that general election.

Upon receiving the above requested document and information, this office and the Commission will give further consideration to your inquiry as an advisory opinion request. If you have any questions about the advisory opinion process or this letter, please contact me.

Letter to Robert S. Royer
Page 2

You may reply by fax if desired (202-219-3923), but you will also need to followup with a signed, original document via regular mail or private delivery.

Sincerely,

A handwritten signature in black ink, appearing to read "N. Bradley Litchfield". The signature is stylized with a large, sweeping initial "N" and a long, horizontal stroke that extends to the right and then loops back down.

N. Bradley Litchfield
Associate General Counsel

ROYER, MEHLE & BABYAK
ATTORNEYS AT LAW
1247 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20006

RECEIVED
F.E.C.
91 DEC -5 PM 2:54

(202) 296-0784

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OF COUNSEL
GREGORY M. FISHER

December 4, 1991

Mr. N. Bradley Litchfield
Associate General Counsel
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Dear Mr. Litchfield:

AOR 1991-39

Thank you for your letter of December 3rd regarding our submission of November 26th requesting an Advisory Opinion and our subsequent conversation of November 29th. Per your instructions, please find enclosed the Department of Justice letter dated November 5, 1991. As I indicated in the November 26th letter and our subsequent conversation, it is our understanding that a carbon copy of the Department of Justice letter was sent to you by the Department of Justice on November 5, 1991.

In your December 3rd letter, you inquired as to what steps the Friends of Senator D'Amato (the "Committee") has taken to segregate and safeguard funds for the purpose of a potential disbursement pending the outcome of an Advisory Opinion. The Committee has, in accordance with 11 CFR § 103.3(b)(4), opted to establish a separate account in the campaign depository (a federally insured bank) to cover the contributions in question as opposed to maintaining in the current accounts sufficient monies to make a potential disbursement.

The Committee has determined that certain contributions called into question by the November 5th Department of Justice letter were received by the 1986 D'Amato campaign committee and certain others were received by the 1992 D'Amato campaign committee. Accordingly, excess funds from the 1986 campaign account have been placed in the segregated account as have funds from the 1992 campaign account. The Committee intends to hold these funds in the segregated account pending guidance from the Federal Election Commission (the "Commission") as to the method of dispersal, if such dispersal is to occur.

I hope this now completes the information needed to proceed with our Advisory Opinion request.

91 DEC -5 AM 11:25

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FEDERAL ELECTION COMMISSION

ROYER, MEHLE & BABYAK

Mr. N. Bradley Litchfield
December 4, 1991
Page Two

Again, the question we are presenting is whether the funds in question should be distributed now or kept in a segregated account until the judicial process ripens into a situation as articulated by Advisory Opinion 1984-52.

We continue to take no position as to what course of action should be required but rather seek the Commission's guidance as to how to proceed in light of the current situation.

If you have any questions regarding the above, please do not hesitate to contact me. I will, of course, wish to be notified by you as to when the Commission will take this matter up for review.

Very truly yours,


Robert S. Royer



U. S. Department of Justice

LAU:MLM:vo
 F.#8903005
 LN1-297.ltr

Washington, DC 20530

November 5, 1991

Friends of Senator D'Amato
 Attn: Arthur W. Jaspán, Esq., Treasurer
 c/o Neal J. Hurwitz, Esq.
 530 Fifth Avenue, 10th Floor
 New York, New York 10036

Re: Unlawful Contributions to Friends
 of Senator D'Amato

Dear Mr. Jaspán:

This letter is written to advise you that certain contributions to Friends of Senator D'Amato have been determined by us to have been made in violation of the Federal Election Campaign Act, in that the source of the contributions was not the named contributor, but rather was Eduardo Lopez-Ballori. Mr. Lopez-Ballori is currently under indictment in the Eastern District of New York, for causing Friends of Senator D'Amato to file false statements with the Federal Election Commission. United States v. Lopez-Ballori, No. 91-Cr-0607 (JM).

The names of the nominee contributors, and the reports on which their contributions are identified, are set forth below:

Report

Pre-General Election Report
 October 22, 1986

Name

Daniel Lage
 Dalia Gonzales de Lage
 Constantino Ovidio Lage
 Yolanda Barcala de Lage
 Rafael Liera Ocasio
 Martha Isabel Lage de Liera
 Fernando Rodriguez Amaro
 Esther N. Folguera
 Rita Nadal
 Nery Yanes
 Rene Kocher Durand
 Margarita Parker Kocher
 Carmen Luisa Alvarez Alayon
 Margarita Alvarez

**Mid-Year Report
July 24, 1987**

**Daniel Lage
Carmen Luisa Alayon Graells,
a/k/a Carmen Luisa Alvarez Alayon**

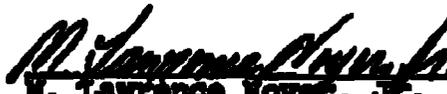
**Quarterly Report
January 26, 1988**

**Carmen Maria Alvarez Alayon
Angel Comasana
Dinora Comasana
Elena Kocher Durand
Margarita Parker Kocher
Bernardo Alvarez
Margarita Alvarez**

A copy of this letter is being sent to the Federal Election Commission. Our investigation is continuing, and we will notify you of any additional unlawful contributions of which we learn.

Very truly yours,

**LAURENCE A. URGENSON
Chief, Fraud Section
Criminal Division**

By: 
**M. Lawrence Hogue, Jr.
Assistant U.S. Attorney
One Pierrepont Plaza, 11th Floor
Brooklyn, New York 11201
(718) 330-7453/7100**

cc: Federal Election Commission