



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

June 25, 2001

ADVISORY OPINION 2001-08

The Honorable Arlen Specter  
United States Senate  
Washington, D.C. 20510

Dear Senator Specter:

This responds to your letters dated May 16 and 25, 2001, requesting an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the use of campaign funds to purchase copies of a book authored by you.

### ***Background***

You are a United States Senator from Pennsylvania, and your principal campaign committee for election to the Senate is Citizens for Arlen Specter ("the Committee").<sup>1</sup> Recently, you wrote your autobiography, *Passion for Truth*. The book was published by HarperCollins Publishers, which is a division of the News Corporation and a major publisher. The Committee plans to purchase copies of the book in bulk from the publisher, and it will give those copies to contributors who have given \$1,000. All royalties attributable to the books purchased by the Committee would be given to charity. You will receive no royalties or income from the sale to the Committee, and will take no tax deductions related to the sale.<sup>2</sup> You have been advised by the publisher that royalties due on sales of the book have now exceeded the publisher's advance on royalties which you previously received. Moreover, the copies purchased by the Committee will not be included in any count that increases or escalates the royalty calculation (percentage earned) based on the number of copies sold (regardless of method of sale).

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<sup>1</sup> Most of the facts below are derived from your March 16 letter to the Senate Select Committee on Ethics requesting approval of your proposal and from the May 3 advice letter sent to you by that committee. In your advisory opinion request to the Commission, you enclose the letters and state that they "specify the facts on which [you] seek clearance" to have the Committee give books to the contributors.

<sup>2</sup> Given the statement in your May 25 letter that you "will be receiving no royalties" as a result of the books sold to the Committee, and your March 16 letter (to the Senate Ethics Committee) stating that "royalties attributable to" the described book sale will be given to charity, the Commission understands that the publisher will directly pay such amounts to charity.

The books purchased by the Committee will be used only for distribution to campaign supporters and will not be either sold or promoted for sale by the campaign. You indicate that all uses of the book will be for the purpose of influencing a Federal election, and the quantity purchased by the Committee will not exceed the number needed for those campaign purposes. The Committee's purchase of the books "will be conducted at arm's length, at the bulk rate available as the standard fair market price that publishers under normal industry practice make available to large purchasers under standard conditions (e.g., that the book not be resold through normal book distribution channels and that the author receive no royalties on those copies purchased by the campaign)."

In a letter dated May 3, 2001, the Senate Select Committee on Ethics concluded that your proposal would not constitute a conversion of campaign funds to the personal use of any Member in violation of Senate Rule 38.2. (See footnote 1.) You ask the Commission to determine whether your proposal would constitute the personal use of campaign funds under the Act and Commission regulations. As discussed below, your request also raises the question of whether the purchase by the Committee, at a bulk rate, would entail an in-kind contribution from the publishing company.

### ***Analysis***

Under the Act and Commission regulations, a candidate and the candidate's committee have wide discretion in making expenditures to influence the candidate's election, but may not convert excess campaign funds to the personal use of the candidate or any other person. 2 U.S.C. §§431(9) and 439a; 11 CFR 113.1(g) and 113.2(d); *see also* Advisory Opinions 2001-03, 2000-40, 2000-12, and 2000-02.

Commission regulations provide guidance regarding what would be considered personal use of campaign funds. Personal use is defined as "any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder." 11 CFR 113.1(g). Commission regulations list a number of purposes that would constitute personal use. 11 CFR 113.1(g)(1)(i). Where a specific use is not listed as personal use, the Commission makes a determination on a case-by-case basis, using the regulation's definition of personal use at 11 CFR 113.1(g). 11 CFR 113.1(g)(1)(ii).<sup>3</sup>

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<sup>3</sup> In explaining the application of the case-by-case approach, the Commission: reaffirm[ed] its long-standing opinion that candidates have wide discretion over the use of campaign funds. If the candidate can reasonably show that the expenses at issue resulted from campaign or officeholder activities, the Commission will not consider the use to be personal use.

Explanation and Justification, *Expenditures; Reports by Political Committees; Personal Use of Campaign Funds*, 60 *Fed. Reg.* 7862, 7867 (February 9, 1995).

The facts, as described in the request, indicate that Committee funds will be used to defray an expense that would not exist irrespective of your Senate campaign. The Commission bases its conclusion on several key facts, as follows. The books purchased by the Committee will be used solely for distribution to contributors to the Committee and thus will be used by the Committee only for the purpose of influencing your election to the Senate.<sup>4</sup> In addition, the quantity purchased by the Committee will not exceed the number needed for the described distribution. You also indicate that you will receive no royalties or income, and will declare no tax deductions, as a result of the sale of these books to the Committee. Moreover, such sales will not increase your opportunity to receive future royalties.<sup>5</sup> Although the regulations on personal use have been interpreted to permit a candidate to sell or rent space, equipment, or other items to his principal campaign committee at the usual and normal charge, your non-receipt of such royalties or other benefits indicates that the sale to the Committee is not, in reality, a device to use the Committee to benefit you financially.<sup>6</sup> *See* Advisory Opinion 1995-46.

The Committee's bulk purchase of the books at a discounted rate raises the issue of whether the vendor publisher is making an in-kind corporate contribution. *See* 2 U.S.C. §441b(a); 11 CFR 114.2(b). The term "contribution" includes giving "anything of value" for the purpose of influencing an election. 2 U.S.C. §§431(8)(A)(i) and 441b(b)(2); 11 CFR 100.7(a)(1) and 114.1(a)(1). The term "anything of value" includes the provision of goods or services at less than the usual and normal charge. 11 CFR 100.7(a)(1)(iii)(A). The "usual and normal charge" for goods means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution. 11 CFR 100.7(a)(1)(iii)(B). In the past, the Commission has concluded that the purchase of goods or services at a discount does not result in a contribution when the discounted items are made available in the ordinary course of business and on the same terms and conditions to the vendor's other customers that are not political organizations or committees. *See* Advisory Opinions 1996-2, 1995-46, and 1994-10. The description of the proposed transaction indicates that the Committee will pay the usual and normal charge for this type of bulk purchase from publishers and thus would not receive an in-kind corporate contribution.

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<sup>4</sup> You state that the book will be given to those who have contributed \$1,000 to your Committee. Thus, the distribution of the book may be viewed as an expression of thanks for support of your past campaigns and an incentive to provide support to your next Senate campaign. *See* Advisory Opinion 1993-20.

<sup>5</sup> Furthermore, no royalties will result from the distribution of the books because the Committee does not plan to sell the books.

<sup>6</sup> *See* Advisory Opinions 2000-02 and 1995-8 (where the Commission concluded that a principal campaign committee could rent office space and office facilities from the candidate at the usual and normal charge); *see also* Advisory Opinion 1995-24 (where the candidate was permitted to sell copies of his self-published book to his PCC at the market price for such sales, so that the committee could sell the book to the public and use the proceeds to repay debts owed to the candidate).

Based on the foregoing analysis, the proposed activity is permissible under the Act and Commission regulations. The amounts spent by the Committee for the purchase of the books should be reported as operating expenditures for the 2004 election cycle. 2 U.S.C. §434(b)(4)(A) and (5)(A); 11 CFR 104.3(b)(2)(i) and (b)(4)(i). Committee reports filed with the Commission indicate that it has already received contributions of approximately \$110,000 in 1999 and 2000, thus triggering the requirement to file a statement of candidacy for 2004. *See* 2 U.S.C. §§431(2)(A) and 432(e)(1); 11 CFR 100.3(a)(1) and 101.1(a).

The Commission expresses no opinion regarding the application of any rules of the United States Senate or any tax law ramifications of the proposed activity because those issues are not within its jurisdiction.

This response constitutes an advisory opinion concerning the application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. *See* 2 U.S.C. §437f.

Sincerely,

(signed)

Danny L. McDonald  
Chairman

Enclosures (AOs 2001-03, 2000-40, 2000-12, 2000-02, 1996-2, 1995-46, 1995-24, 1995-8, 1994-10, and 1993-20)