FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 30, 1997

MEMORANDUM

TO: RON M. HARRIS
PRESS OFFICER
PRESS OFFICE

FROM: ROBERT J. COSTA RJC by NTN 6-30-97
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: PUBLIC ISSUANCE OF THE AUDIT REPORT ON
ARLEN SPECTER '96

Attached please find a copy of the audit report and related documents on Arlen Specter '96 which was approved by the Commission on June 12, 1997.

Informational copies of the report have been received by all parties involved and the report may be released to the public.

Attachment as stated

cc: Office of General Counsel
Office of Public Disclosure
Reports Analysis Division
FEC Library

REPORT OF THE AUDIT DIVISION

ON

Arlen Specter '96

Approved June 12, 1997

FEDERAL ELECTION COMMISSION
999 E STREET, N.W.
WASHINGTON, D.C.

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REPORT OF THE AUDIT DIVISION ON ARLEN SPECTER '96

EXECUTIVE SUMMARY

Arlen Specter '96 (the Committee) registered with the Federal Election Commission on January 20, 1995. The Committee was the principal campaign committee of Senator Arlen Specter, candidate for the 1996 Republican nomination for President of the United States.

The audit was conducted pursuant to 26 U.S.C. §9038(a), which requires the Commission to audit committees that receive Federal funds. The Committee received $1,010,457 in matching funds from the United States Treasury.

The audit findings were presented to the Committee at a conference held on August 27, 1996, and in the Exit Conference Memorandum on November 26, 1996. The Committee filed a response to matters presented at the conference as well as matters addressed in the Exit Conference Memorandum.

In the Audit Report, the Commission made determinations that the Committee pay the United States Treasury $233,768 in connection with the receipt of a prohibited corporate in-kind contribution; $83,749 in connection with the receipt of excessive contributions and $3,562 for checks issued by the Committee that were never cashed. The Committee has paid $87,311 ($83,749 + $3,562) to the United States Treasury.

These matters are summarized below.

APPARENT PROHIBITED IN-KIND CONTRIBUTION — 2 U.S.C. 441b(a) and 11 §CFR 100.7 (a)(1)(iii). The audit report noted that the Committee received a prohibited in-kind contribution in the amount of $233,768. The Committee used an incorporated charter air service for most of its campaign travel and paid a first class rate for each person traveling on its behalf instead of the usual and normal charter rate. Since Koro Aviation, Inc. is licensed to offer commercial service, the Committee should have paid the usual and normal charter rate. The Committee contended that 11 CFR §114.9(e) provides for reimbursement at the first class airfare. It should be noted that 11 CFR §114.9(e) addresses the use of aircraft owned or leased by corporations, other than a corporation licensed to offer commercial services.

UNRESOLVED EXCESSIVE CONTRIBUTIONS — 2 U.S.C. §441a(a)(1)(A) and 11 CFR §§110.1(k), 110.1(l), 103.3(b)(3) and (4). The Committee paid the United States Treasury $83,749, representing the value of excessive contributions that were not reattributed or refunded in accordance with the Commission's Regulations.

STALE-DATED CHECKS — 11 CFR §9038.6. The Committee paid the United States Treasury $3,562, representing the value of checks issued by the Committee that were never cashed.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

REPORT OF THE AUDIT DIVISION ON ARLEN SPECTER '96

I. BACKGROUND

A. AUDIT AUTHORITY

This report is based on an audit of the Arlen Specter '96 (the Committee). The audit is mandated by Section 9038(a) of Title 26 of the United States Code. That section states that "After each matching payment period, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of every candidate and his authorized committees who received payments under section 9037." Also, Section 9039(b) of the United States Code and Section 9038.1(a)(2) of the Commission's Regulations state that the Commission may conduct other examinations and audits from time to time as it deems necessary.

In addition to examining the receipt and use of Federal funds, the audit seeks to determine if the campaign has materially complied with the limitations, prohibitions, and disclosure requirements of the Federal Election Campaign Act of 1971 (FECA), as amended.

B. AUDIT COVERAGE

The audit of the Committee covered the period from its inception, November 1994, through April 30, 1996. The Committee reported an opening cash balance of $-0-; total receipts of $4,134,245; total disbursements of $3,983,428; and a closing cash balance of $150,817. In addition, a limited review was conducted through December 31, 1996 for purposes of determining the Committee's remaining matching fund entitlement.

C. CAMPAIGN ORGANIZATION

The Committee registered with the Federal Election Commission on January 20, 1995. The Treasurer of the Committee is Mr. Paul S. Diamond. The Committee maintains its headquarters in Philadelphia, PA.

During the period audited, the Committee maintained depositories in Pennsylvania and in the District of Columbia. To handle its financial activity, the Committee utilized a total of 4 bank accounts. From these accounts the campaign made approximately 2,600 disbursements. Approximately 20,800 contributions from 16,450 persons were received. These contributions totaled $2,341,071.

In addition to the above contributions, the Committee received $1,010.457 in matching funds from the United States Treasury. This amount represents 6.54% of the $15,455,000 maximum entitlement that any candidate could receive. The Candidate was determined eligible to receive matching funds on August 31, 1995. The Committee made a total of 6 matching fund requests totaling $1,011,171. The Commission certified 99.93% of the requested amount. For matching fund purposes, the Commission determined that Senator Specter's candidacy ended on November 22, 1995. This determination was based on the date the candidate publicly announced he was withdrawing from the campaign. The Commission's Regulations at 11 CFR 9033.5(a)(1) states, in part, that the candidate's ineligibility date shall be the day on which the candidate publicly announces that he or she is not actively conducting campaigns in more than one State. On February 1, 1996, the Committee received its final matching fund payment to defray expenses incurred through November 22, 1995 and to help defray the cost of winding down the campaign.

D. AUDIT SCOPE AND PROCEDURES

In addition to a review of the Committee's expenditures to determine the qualified and non-qualified campaign expenses incurred, the audit covered the following general categories:

1. The receipt of contributions from prohibited sources, such as those from corporations or labor organizations (Finding II.A.);

2. the receipt of contributions or loans in excess of the statutory limitations (Finding II.B.);

3. proper disclosure of contributions from individuals, political committees and other entities, to include the itemization of contributions when required, as well as the completeness and accuracy of the information disclosed;

4. proper disclosure of disbursements including the itemization of disbursements when required, as well as the completeness and accuracy of the information disclosed;

5. proper disclosure of campaign debts and obligations;

6. the accuracy of total reported receipts, disbursements and cash balances as compared to campaign bank records;

7. adequate recordkeeping for campaign transactions;

8. accuracy of the Statement of Net Outstanding Campaign Obligations filed by the Committee to disclose its financial condition and establish continuing matching fund entitlement (Finding II.C.);

9. the Committee's compliance with spending limitations; and,

10. other audit procedures that were deemed necessary in the situation (Finding II.D.).

As part of the Commission's standard audit process, an inventory of campaign records is conducted prior to the audit fieldwork. This inventory is conducted to determine if the auditee's records are materially complete and in an auditable state. Based on our review of records presented, it was concluded that the records were materially complete and fieldwork began immediately.

Unless specifically discussed below, no material non-compliance was detected. It should be noted that the Commission may pursue further any of the matters discussed in this memorandum in an enforcement action.

II. AUDIT FINDINGS AND RECOMMENDATIONS — AMOUNTS DUE TO THE U.S. TREASURY

A. APPARENT PROHIBITED IN-KIND CONTRIBUTION

Section 441b(a) of Title 2 of the United States Code states, in part, that it is unlawful for any national bank or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or for any corporation or labor organization, to make a contribution or expenditure in connection with any election to federal office and that it is unlawful for any candidate, political committee or any other person knowingly to accept or receive any contribution prohibited by this section.

Section 100.7(a)(1)(iii) of Title 11 of the Code of Federal Regulations states, in part, that the term contribution includes the following payments, services or other things of value: A gift, subscription, loan (except for a loan made in accordance with 11 CFR §100.7(b)(11)), advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office is a contribution. For purposes of 11 CFR §100.7(a)(1), the term *anything of value* includes all in-kind contributions. Unless specifically exempted under 11 CFR §100.7(b), the provision of

any goods or services without charge or at a charge which is less than the usual and normal charge for such goods or services is a contribution. If goods or services are provided at less than the usual and normal charge, the amount of the in-kind contribution is the difference between the usual and normal charge for the goods or services at the time of the contribution and the amount charged the political committee. (See also 11 CFR §114.1(a)(1))

Section 100.7(a)(1)(iii)(B) of Title 11 of the Code of Federal Regulations states for purposes of 11 CFR §100.7(a)(1)(iii)(A), *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; and *usual and normal charge* for any services, other than those provided by an unpaid volunteer, means the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered.

The Candidate/Committee used Koro Aviation Incorporated (Koro), a charter air service, for the majority of its campaign-related travel. Koro was formed in 1984 and incorporated in the state of Delaware on September 27, 1988. Koro has an Air Carrier Certificate[1] and is authorized to operate an aircraft charter business which serves the general public and commercial concerns. It maintains a hangar at the Hazleton Municipal Airport, located in Hazleton, Pennsylvania.

According to the Committee, it did not have a contract with Koro, nor did Koro calculate the cost of service provided and submit an invoice to the Committee. Rather, the Committee initially deposited $3,500 on account with Koro. Prior to each flight, Committee personnel determined the cost of first class commercial airfare[2] for the flight leg(s) in question and informed Koro of that amount. Koro would then apply the amount to the Committee's deposit.[3] The Committee then issued a check to Koro in the same amount in order to maintain a $3,500 deposit balance and in effect, pay in advance. During the period March 22, 1995 through November 10, 1995, the Committee paid

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1 An Air Carrier Certificate certifies that an entity has met the requirements of the Federal Aviation Act of 1958, as amended, and the rules, regulations, and standards prescribed thereunder for the issuance of this certificate and is hereby authorized to operate as an air carrier and conduct common carriage operations in accordance with said Act and the rules, regulations, and standards prescribed thereunder and the terms, conditions, and limitations contained in the approved operations specifications.

2 Committee representatives did not know if the first class airfare represented an unrestricted, non-discounted rate, the Committee merely called an airline to obtain the first class fare.

3 In certain cases, the Committee paid Koro a 5% commission.

$83,799 (including the initial deposit) directly to Koro for charter services. In addition, during the period November 14, 1994 through March 19, 1995, $37,948 was paid using the Candidate's American Express credit card.

At the Audit staff's request, the Committee obtained from Koro what the charge for each flight would have been at the usual charter rate. However, it should be noted that the information provided by Koro related to only those flights paid directly by the Committee ($83,799), it did not include the charter rate for the flights paid with the Candidate's American Express credit card ($37,948). Based solely on the information provided at that time, the Committee should have paid $239,680. Consequently, it appeared Koro made and the Committee received a prohibited in-kind contribution of at least $155,881 ($239,680 - 83,799).[4]

Finally, it appeared that Koro sub-contracted three charters to Hazleton Aviation. The Committee paid Hazleton Aviation $4,895. The Audit staff did not receive the flight log or itinerary for these trips. Therefore, it is not known if the cost associated with these charters was based on a first class rate or an actual charter rate.

During our conference subsequent to fieldwork, Committee representatives stated that this matter is analogous to a campaign using an aircraft owned by a corporation and that the Committee has complied with the Regulations at 11 CFR §114.9(e), since the Committee paid in advance the first class commercial rate.

It is the opinion of the Audit staff that the Committees reliance on 11 CFR §114.9(e) is misplaced. The applicable regulation is 11 CFR §100.7(a)(1)(iii) which requires the Committee to pay the usual and normal charge for the service provided. The requirement of advance payment at a first class commercial rate is not applicable in this matter. The Regulation at 114.9(e) addresses the use of an airplane which is owned or leased by a corporation, other than a corporation licensed to offer commercial service. Koro is a corporation licensed to provide charter service, therefore, the Committee was required to pay the same fare as other similarly situated customers of Koro.

In the Exit Conference Memorandum (the Memorandum), the Audit staff recommended that the Committee:

(a) provide the flight itineraries and the actual charter cost for each flight paid with the Candidate's American Express credit card;

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4 This amount will increase once the charter rates for the flights, paid with the Candidate's American Express credit card and paid directly to Hazleton Aviation, are made available.

(b) provide documentation from Hazleton Aviation, to include the flight itineraries, the actual charter cost for each flight, the number of campaign staff traveling, the type of aircraft chartered and the tail number of each aircraft chartered;

(c) provide documentation which demonstrates that the Committee did not receive a prohibited in-kind contribution from Koro; or,

(d) make a payment to the United States Treasury equal to the difference between the usual and normal cost of all campaign-related charters and the amount paid by the Committee. The amount payable by the Committee is $155,881. Once information is obtained regarding the charter costs requested in (a) and (b) above, the amount payable will increase.

In its response to the Memorandum, the Committee provided documentation from Koro with respect to its charter rate for the majority of flights paid with the Candidate's American Express card. The charter cost for those flights total $92,019. Documentation has not been provided for trips occurring on December 6, 1994, December 12, 1994, February 5, 1995 and March 6, 1995. In addition, no documentation has been provided for services provided by Hazleton Aviation.

As previously stated, the value of charter services provided by Koro for flights paid directly by the Committee totaled $239,680. This amount is 2.86 times the first class rate paid by the Committee ($239,680/83,799). The charter rate for flights paid by the Committee (via the Candidate's American Express credit card) totaled $92,019. This amount is 2.66 ($92,019/34,643) times the first class rate paid by the Committee. Therefore, the Audit staff applied the lower factor (2.66) to the December 6th, December 12th, February 5th and March 6th charters as well as to the Hazleton Aviation charters and estimated a charter rate to be $28,711. Based on the above, the total value of the charter services provided by Koro and Hazleton Aviation was $360,410 ([$239,680 + 92,019 actual] + 28,711 estimated). The Committee paid a total of $126,642, for these services. Therefore, it received contributions in the amount of $233,768 (see Attachment 1.).

In response to the Memorandum, the Treasurer stated that in seeking to determine how to value and pay for the Koro air travel, the Committee looked to Federal Election Code (the Code) [sic] Section 114.9 titled "Use of corporate or labor organization facilities and means of transportation." The Committee submits that this provision governs the Koro situation.

The Treasurer further stated:

"It is the opinion of the Audit staff that the Committees reliance on 11 CFR §114.9(e) is misplaced. The applicable regulation is 11 CFR §100.7(a)(1)(iii) which requires the committee to pay the usual and

informal [sic] charge for the service provided. The requirement of advance payment at a first class commercial rate is not applicable in this matter. The Regulation at 114.9(e) addresses the use of an airplane which is owned or leased by a corporation, *other than a corporation licensed to offer commercial service.* Koro is a corporation licensed to provide chartered aircraft service, therefore, the Committee was required to pay the same fare as other similarly situated customers of Koro would be required to pay for the same charter flights. [Emphasis in original].

AS '96 believes that the Division has re-written the Code to come to this conclusion. Koro is a corporation 'other than a corporation...licensed *to other* [sic] *commercial service for travel in connection with a federal election*.' The Audit Division determined that this reference to 'a corporation licensed to offer commercial services in connection with a federal election was the same as a corporation licensed to other [sic] commercial services.' In so doing, the Audit Division has simply read out of existence part of the regulation itself. I respectfully submit that this is legally indefensible. As a matter of well-accepted legal interpretation, all the words in a statute or regulation must be given effect."

"In applying the Code, the Commission must also give effect to each word. Accordingly, the Commission must give some effect to the language ...'in connection with a Federal election...' Because Koro is not licensed to offer commercial service in connection with a Federal election, AS '96 was obligated to pay Koro first class air fare for each trip 'to a city served by regularly scheduled commercial service.'

Moreover, courts have long held that statutes and regulations like the Code, which have penalty provisions, must be strictly construed ....

These extremely well-settled principles of construction compel the conclusion that AS '96 properly valued the Koro flights as first class travel. Indeed, the Commission has itself expressly approved of this valuation formula. In a public notice disposing of a Petition for Rulemaking on December 11, 1991 (56 Fed. Reg. 64566), the Commission stated:

The reimbursement rate set forth at 11 CFR 114(e) [sic] *is consistent with, if not more stringent than the rates used by the House of Representatives' Committee on Standards of Official Conduct* in investigation [sic] potential violations of the Rules of the House of Representatives. *It is also consistent with the General Services Administration's regulations* regarding disclosure of the value of

permissible air travel by federal officials on corporate airplane under the Ethics in Government Act. (Emphasis supplied [in original]).

The General Services Administration regulations in effect at the time of the 1991 Commission statement provided as follows:

...in the case of acceptance of *travel on a private or chartered aircraft*, for purposes of agency reports under this section, *values shall be determined by* computing the total constructive cost of transportation *using premium class air fares to the extent* scheduled air service is available between the relevant cities (56 Fed. Reg. 9878, promulgating 41 CFR § 301-1.9.) (Emphasis supplied [in original]).

The House regulations in effect at the time of the Commission statement identically provided that chartered flights between cities with regularly schedule [sic] air service were to be valued the same as first class flights: ... House Ethics Manual, April, 1992 at 80.

Since the Commission approved of these GSA and House regulations, it is conclusive that private aircraft travel between cities with regularly scheduled commercial service is valued at the first class charge, without any additional limitation on use in federal elections.

Similarly, a ruling by the Senate Ethics Committee supports the interpretation that first class fares are appropriate for Koro's charges: ...Select Committees of Ethics, United States Senate, Interpretative Ruling No. 412.

In conclusion, AS '96 believes not only that it has followed the Code *as written*, it has acted in accordance with the statements of the FEC itself."

In further support of his position concerning rules of statutory construction, the Treasurer cited U.S. Supreme Court cases and cases before the Court of Appeals for the District of Columbia Circuit.[5] The Treasurer also submitted two affidavits from individuals responsible for scheduling air travel for the Candidate's presidential and senate campaigns. The affidavits state that arrangements were made with Koro in its capacity as a corporation, not under any arrangement for leasing charter aircraft services from Koro. A third affidavit was from Steve Jordan, who states he is the General Manager for Koro Aviation, Inc.. Mr. Jordan also states that:

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5 Darlene Walters v. Metropolitan Education Enterprises, Inc., __U.S.__, 1997 U.S. Lexis 462 (1997); Adamo Wrecking Co. v. U.S., 434 U.S. 275 (1978); Greyhound Corporation v. Interstate Commerce Commission, 668 F.2d 1354, 1362 (D.C. Cir. 1981); Tobey v. National Labor Relations Board, 40 F.3d 469 (D.C. Cir. 1994); Zaimi v. U.S.,476 F.2d 511 (D.C. Cir. 1973).

"Koro became a licensed aircraft charter service provider on or about June 11, 1990. Koro is not a carrier licensed to offer commercial services for travel in connection with a federal election. In making aircraft available to Senator Specter during the period 1994 through 1995, as well as other periods, Koro did so in its capacity as a corporation for reimbursement of first class air fares and did not make planes available to Senator Specter under any agreement for charter services."

Finally, Senator Specter supplemented the Treasurer response:

"I wish to add my strong disagreement with the audit staff's findings. It is hard to see how the FEC can disagree with AS '96 response when the FEC expressly approved the GSA regulation which said first class fares applied:

'...in case of acceptance of travel on ...chartered aircraft ...'

Similarly, the House and Senate Committees approved payment of first class fares on private aircraft without any distinction as to whether the aircraft was licensed to offer commercial service. In the absence of any such limitation, the first class fare would apply to all private aircraft.

And, the FEC regulation itself purports to contain a limitation only on:

'an airplane ... licensed to offer commercial services for travel in connection with a federal election.'

Since Koro is not licensed to offer commercial service 'in connection with a federal election', that limitation does not apply to our situation.

On the face of these provisions, AS '96 made the proper calculations."

The Committee's contention that it made the proper calculations seems to rely on the premise that its interpretation of 11 CFR 114.9(e) is correct. It is not.

The wording at issue is "... who uses an airplane which is owned or leased by a corporation or labor organization other than a corporation or labor organization licensed to offer commercial services for travel in connection with a Federal election must, in advance, reimburse ..." As a matter of interpretation, the words -- for travel in connection with a Federal election -- do not modify or otherwise pertain to "other than a corporation or labor organization licensed to offer commercial services." The regulation covers travel in connection with a Federal election by a candidate, candidates agent or person traveling on behalf of a candidate who uses an airplane which is owned or leased

by a corporation or labor organization **provided** that corporation or labor organization is not licensed to offer commercial services. Koro is licensed to offer commercial services by the Federal Aviation Administration (FAA). The FAA does not issue any license expressly for commercial services for travel in connection with a Federal election. Rather, any entity that is licensed to offer commercial services may offer those services in connection with travel for a federal election.

The Commissions Explanation and Justification for this regulation states, in relevant part:

(e) Use of airplanes and other means of transportation

Subsection (e) allows candidates, candidates agents or persons traveling on behalf of candidates to use airplanes owned or leased by a corporation or labor organization which is not licensed to offer commercial services provided that the corporation or labor organization is reimbursed in advance for the use. The advance reimbursement is required because the corporation or labor organization is not in the regular business of offering commercial transportation for credit. Under the standard reimbursement formula provided in (e)(1)(i) and (ii), the amount of the required reimbursement will be known in advance.

The above explanation is clear - "An administrative agency's interpretation of its own regulations is controlling unless it is plainly erroneous or inconsistent with the regulation [footnote omitted]."[6] Also on point, "...[an] administrative rule may not, under the guise of interpretation, be modified, revised, amended or rewritten [footnote omitted]".[7]

Additional guidance concerning the use of aircraft owned or leased by a corporation or labor organization which is not licensed to offer commercial services is contained in the Financial Control and Compliance Manual for Presidential Primary Candidates Receiving Public Financing. Chapter V, Campaign Travel, at Section B.3., Page 161, Corporate or Labor Organization Aircraft, which states -- " To varying degrees campaigns make use of aircraft for campaign travel which are owned or operated by labor organizations or corporations **not licensed to offer commercial services**." (emphasis added). The Commission's publication entitled, Campaign Guide for Congressional Candidates and Committees at page 22, states "A candidate and his or her campaign staff may use an airplane owned or leased by a labor organization or by a corporation that is not licensed to offer commercial services (one that is not an 'air carrier' under Federal Aviation Administration rules) ..."[8]

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6 Norman Singer, Statutes and Statutory Construction, Vol. 1A (New York, 1993), p. 545.

7 Singer, p. 545.

Finally, the Committee's references to valuation methods contained in the General Services Administration regulations, *House Ethics Manual*, April, 1992 at page 80, and Interpretative Ruling No. 412, Select Committee on Ethics, United States Senate are not germane in that the rules cited do not relate to travel by candidates in connection with a Federal election.

It is the opinion of the Audit staff that the Committee's arguments are without merit. The Commission's Regulation and related publications are clear and unambiguous with respect to this matter.

Based on all the information made available to date, it appears that the Committee should have paid Koro $360,410. Consequently, it appears that Koro made and the Committee received a prohibited in-kind contribution of $233,768 ($360,410 - 126,642).

Recommendation #1:

The Audit staff recommends that the Commission make a determination that the Committee make a payment of $233,768 to the United States Treasury, representing the value of prohibited in-kind contributions received.

B. APPARENT UNRESOLVED EXCESSIVE CONTRIBUTIONS

Section 441a(a)(1)(A) of Title 2 of the United States Code states that no person shall make contributions to any candidate with respect to any election for Federal office, which, in the aggregate, exceed $1,000.

Section 110.1(k) of Title 11 of the Code of Federal Regulations states, in part, that any contribution made by more than one person, except for a contribution made by a partnership, shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing. A contribution made by more than one person that does not indicate the amount to be attributed to each contributor shall be attributed equally to each contributor. If a contribution to a candidate on its face or when aggregated with other contributions from the same contributor exceeds the limitations on contributions, the treasurer may ask the contributor whether the contribution was intended to be a joint contribution by more than one person. A contribution shall be considered to be reattributed to another contributor if the treasurer of the recipient political committee asks the contributor whether the contribution is intended to be a joint contribution by more than one person, and informs the contributor that he or she may request the return of the excessive portion of the contribution if it is not intended

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8 Similar language is contained in the Campaign Guide [for Congressional Candidates and Committees] dated July 1988.

to be a joint contribution; and within sixty days from the date of the treasurers receipt of the contribution, the contributors provide the treasurer with a written reattribution of the contribution, which is signed by each contributor, and which indicates the amount to be attributed to each contributor if equal attribution is not intended.

Section 110.1(l) of Title 11 of the Code of Federal Regulations states, in part, that if a political committee receives a written reattribution of a contribution to a different contributor, the treasurer shall retain the written reattribution signed by each contributor. If a political committee does not retain the written records concerning reattribution as required, the reattribution shall not be effective, and the original attribution shall control.

Section 103.3(b)(3) of Title 11 of the Code of Federal Regulations states, in part, that contributions which exceed the contribution limitation may be deposited into a campaign depository. If any such contribution is deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor in accordance with 11 CFR §110.1(k). If a redesignation or reattribution is not obtained, the treasurer shall, within 60 days of the treasurers receipt of the contribution, refund the contribution to the contributor.

Section 103.3(b)(4) of Title 11 of the Code of Federal Regulations states that any contribution which appears to be illegal under 11 CFR §103.3(b)(3), and which is deposited into a campaign depository shall not be used for any disbursements by the political committee until the contribution has been determined to be legal. The political committee must either establish a separate account in a campaign depository for such contributions or maintain sufficient funds to make all such refunds.

At the entrance conference, Committee representatives informed the Audit staff that excessive contributions received early in the campaign had not been refunded. Further, the Committee's Statement of Net Outstanding Campaign Obligations (NOCO) filed with each matching fund submission included, in the liability section, an amount for refunds due to contributors.[9] As a result, certain contributions were tested on a 100% basis, while the remaining contributions were tested on a sample basis.

Based on our 100% review, the Audit staff identified excessive contributions totaling $74,370 that were not refunded or reattributed in accordance with 11 CFR §103.3(b)(3).

In addition, our sample review of contributions identified two excessive contributions totaling $2,000. The identified exceptions, when used to estimate the total dollar value of unresolved excessive contributions in the population sampled, resulted in

[9] This amount remained constant on each NOCO submitted.

a projection of $9,379. It should be noted that the Committee maintained sufficient funds to make all necessary refunds.

At our conference subsequent to the close of fieldwork, the Committee was provided with a schedule of the apparent excessive contributions. The Committee stated they would research the contributions.

In the Memorandum, the Audit staff recommended that the Committee provide evidence that the contributions in question were not excessive or make a payment to the United States Treasury in the amount of $83,749.

In response to the Memorandum, the Committee did not contest the matter. On February 19, 1997, the Committee issued a check to the United States Treasury covering the amount of the excessive contributions noted above. The check was received in the Audit Division on March 5, 1997 and delivered to the U.S. Treasury on March 7, 1997.

C. DETERMINATION OF NET OUTSTANDING CAMPAIGN OBLIGATIONS

Section 9034.5 (a) of Title 11 of the Code of Federal Regulations requires that within 15 calendar days after the candidates date of ineligibility, the candidate shall submit a statement of net outstanding campaign obligations which reflects the total of all outstanding obligations for qualified campaign expenses plus estimated necessary winding down costs.

In addition, Section 9034.1 (b) of Title 11 of the Code of Federal Regulations states, in part, that if on the date of ineligibility a candidate has net outstanding campaign obligations as defined under 11 CFR §9034.5, that candidate may continue to receive matching payments provided that on the date of payment there are remaining net outstanding campaign obligations.

Senator Specter's date of ineligibility was November 22, 1995. The Audit staff reviewed the Committee's financial activity through June 30, 1996, examined disclosure reports for the period July 1, 1996 through December 31, 1996, analyzed winding down costs, and prepared the Statement of Net Outstanding Campaign Obligations which appears below.

ARLEN SPECTER '96

STATEMENT OF NET OUTSTANDING CAMPAIGN OBLIGATIONS
as of November 22, 1995
as updated through December 31, 1996

ASSETS

Cash in Bank		$ 57,643	(a)
Cash on Hand		36	
Accounts Receivable		112,190	
Capital Assets		28,373	
Total Assets			$ 198,242

OBLIGATIONS

Accounts Payable for Qualified Campaign Expenses		392,088	
Loans Payable		551,000	
Loan Interest Payable		12,082	
Amount Payable to U. S. Treasury		321,079	
Apparent Prohibited Contributions	$233,768		
Apparent Unresolved Excessive Contributions	83,749 (b)		
Stale-dated Checks	3,562		
Actual Winding Down Costs (11/23/95 - 12/31/96)		140,678	
Estimated Winding Down Costs (01/01/97 - 12/31/97)		17,189	
Total Obligations			1,434,116
Net Outstanding Campaign Obligations as of November 22, 1995 (Deficit)			($1,235,874)

(a) Outstanding checks issued prior to the date of ineligibility and determined to be stale-dated have been added back to the Cash in Bank figure.

(b) On September 26, 1996, the Committee made a contribution refund of $4,796. This amount is included in the amount of unresolved excessive contributions, payable to the U.S. Treasury (see Finding II.B.). The 9/26/96 refund is not included as an obligation for purposes of calculating the Candidate's remaining entitlement.

Shown below are adjustments for funds received after November 22, 1995, based on the most current financial information available.

Net Outstanding Campaign Obligations (Deficit) as of 11/22/95	($1,235,874)
Matching Funds Received 11/23/95 - 12/31/96	1,010,457
Net Private Contributions Received 11/23/95 to 12/31/96	8,993
Other Receipts/Income Received 11/23/95 to 12/31/96	4,099
Remaining Net Outstanding Campaign Obligations (Deficit)	($ 212,325)

As presented above, the Committee has not received matching fund payments in excess of its entitlement.

D. STALE-DATED COMMITTEE CHECKS

Section 9038.6 of Title 11 of the Code of Federal Regulations states, in part, that if the committee has checks outstanding to creditors that have not been cashed, the committee shall notify the Commission. The committee shall inform the Commission of its efforts to locate the payees, if such efforts have been necessary, and its efforts to encourage the payees to cash the outstanding checks. The committee shall also submit a check for the total amount of such outstanding checks payable to the United States Treasury.

During the review of Committee disbursement activity, the Audit staff identified three checks made payable to vendors which had not been cashed. Those checks totaled $3,562 and were dated April 23, 1996.

At the conference subsequent to the close of fieldwork, the Committee was provided a schedule of the outstanding stale-dated checks but did not comment with regard to this matter.

In the Memorandum, the Audit staff recommended that the Committee provide evidence that either the checks were not outstanding or that the outstanding checks were voided with evidence that no Committee obligation existed.

In its response to the Memorandum, the Committee did not contest this matter. On February 19, 1997, the Committee issued a check to the United States Treasury covering the amount of stale dated checks. The check was received in the Audit Division on March 5, 1997 and delivered to the U.S. Treasury on March 7, 1997.

Recommendation #2

The Audit staff recommends that the Commission make a determination that stale-dated checks, totaling $3,562, are payable to the United States Treasury. The payment has been made.

III. SUMMARY OF AMOUNTS DUE TO THE U.S. TREASURY

Finding II.A.	Apparent Prohibited Contributions	$233,768
Finding II.B.	Apparent Unresolved Excessive Contributions	83,749*
Finding II.D.	Stale-dated Committee Checks	3,562*
	Total	$321,079

* As stated in Findings II.B. and D. these amounts have been paid.

ARLEN SPECTER '96
Koro Flights Paid Directly by Committee Check

Check Date	Check No.	Amount Paid By Committee	Trip Date	Itinerary	Koro's Charter Cost	
03/22/95	1307	3,500.00	advance			
03/27/95	1319	2,412.00	03/25/95	PHL-DSM-FOD-PIT-PHL	9,160.00	
03/29/95	1323	618.00	03/27/95	PHL-PIT-DCA	2,924.80	
03/30/95	1327	2,986.50	03/30/95	DCA-MHT-DCA	4,824.93	
03/31/95	1328	4,020.00	03/31/95	DCA-PSM-DCA		x
04/04/95	1335	5,188.00	04/01/95	DCA-DSM-HYS-PHL	10,261.00	
04/21/95	1429	822.00	04/21/95	PHL-BTV-MHT-PSM	4,589.55	
			04/22/95	PSM-PHL		x
04/24/95	1431	291.00	04/24/95	AVP-DCA	1,737.63	
04/28/95	1433	483.50	04/29/95	BOS-PWM-DCA	3,234.15	
05/08/95	1470	1,183.00	05/05/95	DCA-MHT	2,610.00	
05/11/95	1476	4,098.00	05/09/95	DCA-MHT-DCA	2,327.82	
			05/12/95	CGX-ALO-DSM		x
			05/13/95	DSM-DEN	12,044.80	
			05/14/95	DEN-HZL		x
05/15/95	1480	1,296.00	05/15/95	ACY-PIT-ERI-DCA	4,060.29	
05/22/95	1535	338.00	05/22/95	AVP-DCA	1,302.63	
06/06/95	1578	258.00	06/05/95	IPT-DCA	1,490.63	
06/09/95	1606	1,454.00	06/09/95	HEF-DCA-PVD-PSM-ACY	5,940.00	
06/19/95	1634	1,741.00	06/16/95	DCA-MHT-BDL	2,969.91	
			06/19/95	PHL-PIT-DCA	3,515.46	
06/23/95	1659	3,036.00	06/23/95	DCA-DSM-MKC-ICT-PHL	10,900.00	
06/26/95	1666	674.00	06/26/95	PHL-ACO-JST-PHL-DCA	2,835.63	
07/03/95	1686	1,204.00	06/30/95	PHL-MHT	3,404.00	
			07/01/95	MHT-PVD-ACY		x
07/05/95	1701	4,295.00	07/06/95	PHL-SUX-DSM	11,920.00	
			07/07/95	DSM-BRL-DSM-ACY		x
07/10/95	1707	2,187.00	07/10/95	ACY-MHT-PSM-DCA	5,764.50	
07/17/95	1716	2,914.00	07/17/95	PHL-PWM-BGR-MHT-PSM-DCA	4,676.12	
08/07/95	1839	3,335.50	07/24/95	PHL-ATL-DCA	7,208.96	
			07/30/95	ACY-MHT	4,489.38	
			07/31/95	MHT-BOS-DCA		x
08/11/95	1865	267.71	08/05/95	DCA-ACY	2,507.96	
08/14/95	1883	6,315.00	08/11/95	DCA-DSM		x
			08/12/95	DSM-CID-DAL	15,020.09	
			08/13/95	DAL-PHL		x
08/23/95	1925	2,921.00	08/14/95	PHL-DEN-PHL	2,847.90	
			08/17/95	PSM-DSM		x
09/01/95	1952	2,000.00	08/18/95	DSM-AZO-DSM	12,868.00	
			08/19/95	DSM-DCA		x
09/12/95	1994	5,240.50	09/03/95	DCA-ACY	1,521.91	
			09/07/95	DCA-BOS-DCA	4,568.85	
09/14/95	2037	830.00	09/09/95	PHL-MHT-PHL	3,358.75	
09/22/95	2068	2,286.20	09/10/95	PHL-DSM-PHL	8,753.00	
			09/18/95	PHL-PIT-MHT-PHL	2,903.50	
09/25/95	2076	3,346.00	09/22/95	DCA-DTW-PLN	11,443.68	
			09/23/95	PLN-DSM-PHL		x
10/06/95	2115	3,371.00	09/29/95	DCA-MHT	2,526.91	
			10/01/95	MHT-PWM		x
			10/02/95	PWM-BGR-MHT	5,304.25	
			10/03/95	MHT-PHL		x
			10/06/95	MHT-AVP-PHL	2,815.50	
10/10/95	2116	3,805.00	10/07/95	PHL-PSM-PHL	5,898.00	
			10/09/95	PHL-PIT-CMH-BKL-PIT-DCA	4,551.50	
10/12/95	2132	1,017.00	10/11/95	DCA-MHT	2,526.90	
10/19/95	2159	1,962.00	10/16/95	PHL-CID-DCA	8,595.00	
10/27/95	2180	1,852.00	10/23/95	PHL-DSM-DCA	9,223.37	
11/08/95	2211	1,779.00	10/30/95	PHL-BGR-AUG-LEW-PSM-PHL	4,568.50	
11/10/95	2220	454.00	11/04/95	PHL-BGR-PHL	3,684.00	
	SUB-TOTAL	85,780.91				
	LESS CREDIT	1,981.95				
	TOTAL	83,798.96			239,679.76	

x See page 3 for explanation.

IM3565.WK4

ARLEN SPECTER '96
Koro Flights Paid by Candidate's American Express Credit Card

Check Date *	Amount Paid By Committee	Trip Date	Itinerary	Koro's Charter Cost	
12/09/94	4,192.00	11/14/94	PHL-MHT-DSM	6,720.00	
12/22/94	2,025.00	11/17/94	MHT-DCA -MHT	1,820.00	
12/22/94	1,215.00	11/18/94	MHT-PHL	2,520.00	
01/05/95	2,173.40	11/16/94	BRL-MHT	4,060.00	
	1,541.00	12/06/94	PHL-MHT-PHL	4,099.06	o
		12/06/94	MHT-DCA		x
	1,764.00	12/12/94	PHL-OMA-SUX-CGX	4,692.24	o
02/01/95	4,988.00	01/06/95	DCA-TUS	26,930.48	
		01/07/95	TUS-PRC-PHX		x
		01/08/95	PHX-TUS-PHX		x
		01/09/95	PHX-TUS-PHX-DCA		x
02/27/95	11,513.70	01/16/95	PHL-DMS-MCW	27,746.12	
		01/16/95	DMS-MDT		x
		01/17/95	MDT-DCA		x
		01/22/95	PHL-MHT-PHL		x
		02/06/95	PHL-PBI-RSW-PHL		x
		02/13/95	PHL-MHT-PWM-DCA		x
		02/05/95	DCA-CLE-PHL	5,172.64	#
04/07/95	6,792.45	02/17/95	PHL-DCA-CGX-AVP	19,586.67	
		02/19/95	PHL-MHT		x
		02/23/95	DCA-PIT-DCA		x
		02/25/95	PHL-DSM-PHL		x
		03/03/95	DCA-ACY		x
		03/06/95	PHL-PIT-DCA	1,726.07	#
04/28/95	1,743.00	03/19/95	PHL-MHT-PHL	2,636.04	
TOTAL	37,947.55			107,709.32	

Hazleton Aviation Flights Paid by the Committee

05/11/95	748.00	05/12/95	DCA-CGX	1,989.68	o
09/14/95	1,004.00	09/10/95	PHL-FSD	2,670.64	o
09/14/95	1,431.00	09/11/95	FSD-DSM	3,806.46	o
09/14/95	1,048.00	09/11/95	DSM-DCA	2,787.68	o
10/06/95	664.00	10/05/95	PHL-MHT	1,766.24	o
TOTAL	4,895.00			13,020.70	

* Date Committee paid directly American Express.
x, o or # See page 3 for explanation.

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ARLEN SPECTER '96
Recap of Chartered Air Cost

	Koro's Charter Cost	Amount Paid By Committee	Amount of In-kind Contribution
Koro chartered flights paid directly by Committee check (page 1)	239,679.76	83,798.96	155,880.80
Koro chartered flights paid by the Candidate's American Express Credit Card (page 2)	107,709.32	37,947.55	69,761.77
Hazleton Aviation flights paid directly by Committee check (page 2)	13,020.70	4,895.00	8,125.70
TOTAL PROHIBITED IN-KIND CONTRIBUTION			233,768.27

Legend

- o Koro did not provide the actual charter cost for Koro flights occurring on December 6 and December 12, 1994 and all Hazleton Aviation flights. As stated in Finding II. A., the amount was estimated using a factor of 2.66 times the amount paid by the Committee.

- # The flight leg was omitted on the schedule provided by Koro for flights occurring on February 5, 1995 and March 6, 1995. Based on the documentation provided by Koro, the Audit staff could not determine if the actual charter cost for that leg was included in the amount calculated by Koro. Accordingly, the Audit staff used a factor of 2.66 times the amount paid by the Committee. Adjustments will be made if these estimates are proved to be duplicative.

- x Koro's charter cost is included in the figure directly above.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 13, 1997

MEMORANDUM

TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

Kim Bright-Coleman
Associate General Counsel

Lorenzo Holloway
Assistant General Counsel

Susan L. Kay
Attorney

SUBJECT: Audit Report on Arlen Specter '96 (LRA #475)

I. INTRODUCTION

The proposed Audit Report on Arlen Specter '96 ("the Committee") was submitted to the Office of General Counsel on April 2, 1997. The following memorandum summarizes our comments on the proposed report.[1] We concur with the findings in the Audit Report which are not discussed separately in the following memorandum. If you have any questions, please contact Susan Kay, the attorney assigned to this audit.

[1] We recommend that the Commission consider this document in open session since the proposed Audit Report does not include matters exempt from public disclosure. *See* 11 C.F.R. § 2.4.

II. APPARENT IN-KIND CONTRIBUTIONS (II.A.)

A. AUDIT DIVISION FINDINGS

The proposed Audit Report recommends that the Committee make a payment of $233,768 to the United States Treasury. According to the Audit staff, this figure represents the value of a prohibited in-kind contribution received by Arlen Specter '96 from Koro Aviation Incorporated ("Koro"), a charter air service. According to the Report, the Committee paid Koro based on a first class rate pursuant to 11 C.F.R. § 114.9(e), and not based on the usual and normal charter rate required by 11 C.F.R. § 100.7(a)(1)(iii)(B).

The Audit Report notes that the Candidate/Committee used Koro's charter air service for a majority of its campaign-related travel.[2] Koro was formed in 1984 and was incorporated in the state of Delaware on September 26, 1988. Koro has an Air Carrier Certificate and is authorized to operate an aircraft charter business which serves the general public and commercial concerns.[3] Since Koro is a commercial air service and has established charter rates, the Audit staff concluded that the Committee should have paid according to those charter rates. *See* 11 C.F.R. §100.7(a)(1)(iii)(B).

The Committee had an arrangement with Koro whereby the Committee maintained a deposit of $3,500 with Koro. Prior to each flight, Committee personnel determined the cost of first class commercial airfare for the flight leg(s) in question and informed Koro of the amount. Koro would then apply the amount to the Committee's deposit. The Committee would then reimburse their account in order to maintain a 3,500 balance. According to the Audit staff, the Committee was basically paying Koro in advance for the flights.

The Audit staff identified an in-kind contribution in the amount of $233,768 by calculating the difference between the usual and normal charge for Koro's services and the amount the Committee was actually charged. The Audit Report found that from March 22, 1995 through November 10, 1995, the Committee paid $83,799 directly to Koro for air transportation services, and from November 14, 1994 through March 19, 1995, the Committee paid Koro an additional $37,948 with the Candidate's American Express card.[4] In addition, Koro sub-contracted three charters to Hazelton Aviation, and the Committee paid $4,895 for these flights.[5] Thus, the Committee paid a total of $126,642 for these travel services.

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[2] Koro sub-contracted Hazelton Aviation on three occasions. The Committee also used other commercial air services which are not a subject of this Audit Report.

[3] Koro maintains a hangar at the Hazelton Municipal Airport in Hazelton, Pennsylvania.

[4] The Audit staff found that the Committee paid this amount directly to American Express. Therefore, none of this amount constituted a personal expenditure by the Candidate that is subject to his personal limitation of $50,000. 11 C.F.R. §9035.2(a)(2).

[5] The Audit staff did not receive the flight log or itinerary for these trips. Therefore, it is not known if the cost associated with these charters was based on a first class rate or an actual charter rate.

The total value of the charter services provided by Koro and Hazelton Aviation was $360,410 according to the Audit staff's calculation. This calculation is based on Koro's usual and normal charter rate. The Audit staff obtained the charter rate for the flights directly from Koro.[6] Koro's normal and usual business practice is to charge an hourly rate. The specific hourly rate is based on the type of plane chartered. This information is published in *The Air Charter Guide: The Worldwide Guide to Business and Individual Charter of Aircraft*.[7] Since the Committee should have paid $360,410, and it only paid $126,642, the Audit staff found an in-kind contribution in the amount of $233,768.

B. COMMITTEE ARGUMENTS

The Committee disputes the Audit staff's finding; it contends that instead of paying the normal and usual charter rate as required by section 100.7(a)(1)(iii)(B), it appropriately relied on 11 C.F.R. § 114.9(e) in applying first class commercial air fare to the Koro flights. The Committee contends that the modifying phrase in section 114.9(e) "*licensed to offer commercial services for travel in connection with a federal election*" refers to planes that offer travel services specifically for federal elections. Thus, the Committee argues that Koro was licensed to offer commercial services, but was not licensed to offer commercial services *in connection with a federal election.*

The Committee also looks to General Services Administration regulation and Senate Ethics regulations in support of its application of section 114.9(e). The Committee argues that section 114.9(e) follows GSA regulation and the Senate Ethics regulations for requiring first class air fare.

In addition, the Committee argues that it had an arrangement with Koro as a corporation and not as a commercial charter service. The Committee supports this argument with affidavits from two committee schedulers and from the General Manager of Koro who attest to the fact that the arrangement between the Committee and Koro was based solely on Koro's capacity as a corporation.[8]

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[6] Koro provided the Audit staff with the value of charter services provided for all but four flights. The Audit staff requested the documentation from the Committee, but the auditors never received the information regarding travel occurring on December 6, 1994, December 12, 1994, February 5, 1995 and March 6, 1995. In addition, no documentation was provided for services provided by Hazelton Aviation. The Audit staff estimated the value of these services based on the documentation they had received for the majority of flights provided by Koro. The estimated amount calculated by the Audit staff for these seven flights is $28,711. In light of the fact that the Audit staff requested the information, and the Committee did agree to provide the information, 11 C.F.R. § 9033.1(b)(5), the Office of General Counsel believes that it was appropriate for the auditors to estimate the value of the services. If additional information is received, this figure will be adjusted accordingly.

[7] 10th Edition (1996)

[8] These affidavits were provided to the Office of General Counsel following a meeting between Senator Specter and the staff from the Office of General Counsel held on February 14, 1997. At the meeting, Senator Specter discussed the Committee's position with respect to the application of section 114.9(e).

C. ANALYSIS

The Committee incorrectly relied on 11 C.F.R. § 114.9 in paying for the flights on Koro's airplanes. Section 114.9(e) states that:

> a candidate, a candidate's agent, or person traveling on behalf of a candidate who uses an airplane which is owned or leased by a corporation or labor organization *other than a corporation or labor organization licensed to offer commercial services*(emphasis added) for travel in connection with a Federal election must, in advance, reimburse the corporation or labor organization, . . . in the case of travel to a city served by regularly scheduled commercial service, the first class air fare.

The applicable regulation is 11 C.F.R. § 100.7(a)(1)(iii)(B) since Koro provides commercial charter flights and maintains a schedule of usual and normal charges.[9] Section 100.7(a)(1)(iii)(B) states that:

> Unless specifically exempted under 11 C.F.R. § 100.7(b), the provision of any goods or services without charge or at a charge which is less than the usual and normal charge for such goods and services is a contribution . . . If goods and services are provided at less than the usual and normal charge, the amount of the in-kind contribution is the difference between the usual and normal charge for the goods or services at the time of the contribution and the amount charged the political committee.

Since Koro provided a service at a charge which is less than the usual and normal charge, the Committee received an in-kind contribution and must make a payment to the U.S. Treasury based on the difference between the usual and normal charge for the services and the amount actually charged. 11 C.F.R. § 100.7(a)(iii)(B).

Section 114.9(e) makes a distinction between private aircraft provided by a corporation and commercial air travel services. Since corporations not in the business of providing air travel generally do not have established rates for the use of their private planes, the Commission's regulations under section 114.9(e) determine the appropriate payment for use of those planes. Explanation and Justification for 11 C.F.R. § 114.9(e), H.R. Doc. No. 95-44, 95th Cong., 1st Sess., 116 (1977). The regulation is not intended to impose payment rates upon commercial airlines or airplanes licensed to offer commercial services. These entities already have usual and

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[9] Since there were time periods when the value of services was greater than the amount on deposit with Koro, it appears that Koro made an extension of credit to the Committee for these services. *See* 11 C.F.R. §116.1(e)(3). However, there is no indication that these limited extensions of credit were not in the ordinary course of business. *See* 11 C.F.R. § 116.3(c)(1)-(3);*see also* 11 C.F.R. § 116.3(d) (extension of credit by regulated industries).

normal rates for their flights and therefore, section 100.7(a)(iii)(B) applies. If a different rate is charged, other that the normal and usual rate, a benefit is provided to the candidate that is not provided to all customers for the same services. Such a benefit constitutes an in-kind contribution to the Committee. 11 C.F.R. § 100.7(a)(iii)(B). In this case, Koro is licensed to offer commercial service and it has an established pay schedule.[10] The Audit staff used these published rates in assessing whether the Committee paid the usual and normal charges.

The Committee argues that as a matter of statutory construction, the Commission must give effect to the words *"in connection with a federal election."* However, these words modify the type of travel that is taking place, and not the type of airline service that is offered. The federal government does not license commercial aircraft based on whether they carry passengers traveling in connection with a federal election.[11] The Committee advances an unreasonable interpretation of the regulation. It is a well-established principle of statutory interpretation that the law favors rational and sensible construction. A construction should not result in absurd or unreasonable consequences. 3 Norman J. Singer, Sutherland Stat.Const. §45.12 (5th Ed.,1992); *see American Tobacco Co. v. Patterson*, 456 U.S. 63 (1982).

In addition, the Committee's argument that section 114.9(e) follows General Services Administration regulations and Senate Ethics regulations for requiring first class air fare is irrelevant. As a publicly-financed presidential candidate, Senator Specter agreed to comply with the Federal Election Campaign Act ("FECA"). 11 C.F.R. § 9033.1(b)(10). General Services regulations and Senate Ethics regulations are not applicable here. Any prior relationship that Arlen Specter had with Koro that applied the General Services regulations or the Senate Ethics regulations is also irrelevant. As a presidential candidate, the regulations promulgated under the FECA apply regardless of the prior arrangements that may have existed in the past between Senator Specter and Koro. There is no dispute that section 114.9(e) requires first class air fare. The issue is whether section 114.9 should be applied. Since Koro is licensed to offer commercial service, section 114.9(e) is not applicable.

Finally, the Committee argues that it used Koro's services solely in its capacity as a corporation, and not as a commercial air charter service. Although circumstances may exist where an air travel service provides the use of a private corporate airplane subject to payment under section 114.9(e), that was not the case here. Koro is licensed as a charter service, and the facts adduced during the audit indicate that the Committee utilized its services as a charter company. Koro provided the Committee with the same planes it provides its other customers who pay the normal and usual rate. It appears that Koro did not have any "private corporate aircraft." All four of Koro's planes were used for the purpose of providing charter services. Furthermore, the Committee chartered the entire aircraft for its use in the campaign. Records provided during the audit indicate that all of the passengers on the plane were Committee personnel, and the Committee determined the plane's destination. Therefore, Koro appears to

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[10] *See The Air Charter Guide*

[11] *See* 49 C.F.R. §§41110(concerning certificates for air carriers), 41102(charter aircraft certificates), and 41103(air cargo certificates). Generally, a license is issued based on whether the airline is a common carrier, cargo carrier, or a passenger carrier.

have provided charter services similar to those it would provide other customers. The affidavits supplied by the Committee do not change these facts. Thus, the Committee should not be allowed to circumvent the requirements of 11 C.F.R. § 100.7(a)(iii)(B) by paying less than the normal and usual charter rate Koro charged other customers.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 23, 1997

Mr. Paul Diamond. Treasurer
Arlen Specter '96
111 South 15th St., 21st floor
Philadelphia, PA 19102

Dear Mr. Diamond:

Attached, please find the Audit Report on Arlen Specter '96. The Commission approved this report on June 12, 1997. As noted on page three of the Audit Report, the Commission may pursue any of the matters discussed in an enforcement action.

The Commission determined that a payment to the U.S. Treasury in the amount of $321,079 representing the value of a prohibited in-kind contribution ($233,768), unresolved excessive contributions ($83,749) and Committee issued checks that were never cashed ($3,562) was required. The Committee has paid $87,311 ($83,749 + $3,562) to the U.S. Treasury.

The Commission approved Audit Report will be placed on the public record on June 30, 1997. Should you have any questions regarding the public release of this report, please contact Ron Harris of the Commission's Press Office at (202) 219-4155.

Any questions you may have related to matters covered during the audit or in the report should be addressed to Lorenzo David or Tom Nurthen of the Audit Division at (202) 219-3720 or toll free at (800) 424-9530.

Sincerely,

HJ Hatchi Jr

For Robert J. Costa
Assistant Staff Director
Audit Division

Attachment as stated

99.07.025.1411

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C 20463

June 23, 1997

The Honorable Arlen Specter
Arlen Specter '96
111 South 15th St., 21st floor
Philadelphia, PA 19102

Dear Senator Specter:

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Any questions you may have related to matters covered during the audit or in the report should be addressed to Lorenzo David or Tom Nurthen of the Audit Division at (202) 219-3720 or toll free at (800) 424-9530.

Sincerely,

H Hallett

FOR Robert J. Costa
Assistant Staff Director
Audit Division

Attachment as stated

CHRONOLOGY

ARLEN SPECTER '96

Pre-audit Fieldwork Commenced	05/28/96
Audit Fieldwork	05/28/96 — 08/16/96
Exit Conference Memorandum to the Committee	11/26/96
Response Received to the Exit Conference Memorandum	02/11/97
Audit Report Approved	06/12/97