

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE



1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550

Public: (916) 445-9555
Facsimile: (916) 324-4293

August 21, 2008

Ms. Jen Seely
P.O. Box 2825
Dublin, CA 94568

Re: FDIC Seizure of IndyMac Bank, FSB

Dear Ms. Seely:

Thank you for your July 17 letter in which you asked this office to investigate whether Senator Charles Schumer may have violated section 3369 of the California Financial Code by making false statements or rumors about IndyMac Bank. While we deeply regret the circumstances surrounding IndyMac's failure, we believe that there is insufficient evidence for us to investigate Senator Schumer at this time.

To begin with, prosecutions under section 3369 require the underlying statement to be "untrue in fact" and we have no reason to believe that Senator Schumer's statements were factually false. The Senator's letters contain comments that appear to be drawn from publicly available sources, including IndyMac's own quarterly 10-Q filings with the SEC.

Moreover, Senator Schumer is protected by the Speech or Debate Clause in Article I, sec. 6., cl. 1 of the U.S. Constitution. This clause provides that members of Congress "shall in cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses . . . and for any speech or debate in either house, they shall not be questioned in any other place." This privilege can be invoked in either criminal or civil proceedings.

Finally, while Senator Schumer's statements may have accelerated public concern about IndyMac's financial condition, we do not believe that we can prove that they caused the bank's failure.

Once again, thank you for your letter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Thomas Greene", written over a horizontal line.

THOMAS GREENE
Special Assistant Attorney General

For EDMUND G. BROWN JR.
Attorney General

TG/gl