



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary
FROM: Office of General Counsel *JK*
DATE: November 7, 1997
SUBJECT: MUR 4594- Memo to the Commission

The attached is submitted as an Agenda document for the Commission Meeting of November 12, 1997

Open Session _____ Closed Session XX

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
Friends for Fasi and its treasurer)	
China Airlines)	MUR 4594
Longevity International Enterprises)	
Corporation)	
Frank Fasi)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On October 3, 1997, the Federal Election Commission approved Subpoenas to Produce Documents and Orders to provide Written Answers ("Subpoenas and Orders") to three Respondents and six non-Respondent witnesses. On October 28, 1997, this Office received a Motion to Quash from China Airlines ("CAL"), and on October 29, 1991, this Office received a Motion to Quash from Longevity International Enterprises ("Longevity"). See Attachments 1 & 2. Since that time, CAL has indicated that it might be willing to partially comply with the Commission's discovery. See Attachment 6. However, Longevity has made no such offer. Thus, this report recommends that Longevity's Motion to Quash be denied.

II. DISCUSSION

Although the Motions vary somewhat, the major thrusts of their arguments, which are essentially the same as those they submitted in their previous responses, can be summarized into three objections.¹ Each will be discussed in turn.

¹ Additionally, Longevity contends that service of process addressed to Maybelle Pang (an employee of Longevity), care of Longevity's counsel, was improper and ineffective. Under ABA Model Rule of Professional Conduct 4.2, attorneys may not "communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter..." Following the policy that current employees are part of the employing party,

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First, CAL and Longevity argue that the Commission lacks authority over the investigation because the statute of limitations at 28 U.S.C. § 2462 bars any claim that might arise from the events at issue. They state that the information sought pertains to activity beginning in 1981 and, therefore, is not discoverable pursuant to the statute of limitations. In fact, as indicated in the General Counsel's Report dated September 29, 1997, although the alleged activity commenced in January 1984 when Mr. Fasi occupied the office space, it continued through November 1996 when he vacated the premises. The statute of limitations at Section 2462 would not apply to activity that occurred within the past five years. In this matter, each monthly rent subsidy that occurred during the past five years would constitute a separate violation.

In *FEC v. Williams*, 104 F.3d 237 (9th Cir. 1996), *petition. for cert. filed*, 66 U.S.L.W. 3297 (U.S. Oct. 3, 1997) (No. 97-601), the Ninth Circuit held that Section 2462 bars the Commission from obtaining a civil penalty or injunctive relief for activity that occurred prior to five years of the violation. See also *FEC v. National Right to Work Committee*, 916 F. Supp. 10 (D.D.C. 1996). However, the Solicitor General has filed a petition for certiorari in *Williams*, challenging the Ninth Circuit's conclusion that Section 2462 bars injunctive relief and its application of the doctrine of equitable tolling. *Id.* Other courts, including the Eleventh Circuit, have held that Section 2462 does not bar injunctive relief. See *United States v. Banks*, 115 F.3d 916, 919 & n.6 (11th Cir. 1997); *FEC v. The Christian Coalition*, 965 F. Supp. 66 (D.D.C.

this Office attempted to serve the Subpoena for Ms. Pang to counsel for Longevity. See, e.g., *Miano v. AC&R Advertising, Inc.*, 148 F.R.D. 68, 75 (S.D.N.Y. 1993); also see *Upjohn v. U.S.* 449 U.S. 395 (1981) and *Admiral Ins. v. U.S. Dist. Court for Dis. of Ariz.*, 881 F. 2d 1486, 1492 (9th Cir. 1989). In any event, this Office has arranged for retrieval of Ms. Pang's Subpoena and Order, and service directly on her.

1997); *FEC v. National Republican Senatorial Committee* *FEC v. NRSC*, 877 F.Supp. 15, 20-21 (D.D.C. 1995). Thus, the Commission may be able to obtain injunctive relief for violations in this matter that occurred prior to the past five years. Also, although the statute of limitations at Section 2462 bars obtaining civil penalties for violations that are more than five years old, it would not appear to bar investigations.

Second, CAL and Longevity contend that the information the Commission seeks is irrelevant because facts already known to the Commission demonstrate that the reduced rental rate for Fasi's office space at the Cultural Plaza was not a "contribution" used "in connection with an election," and therefore there has been no violation of the Federal Election Campaign Act ("FECA"). As discussed in the First General Counsel's Report dated November 26, 1996, and the General Counsel's report dated September 29, 1997, during the time in question, the Fasi campaign was paying far below fair rental value ("FRV"). Additionally, documents supplied by Fasi and Friends for Fasi, indicate a far wider gap in FRV and Fasi's rate than previously known. Correspondence between Mr. Fasi and Rex Fa, the current manager of the Cultural Plaza, states that the "going rate" on the space Fasi occupied amounted to over \$6,000 per month during 1996. See Attachment 4. Further, during the course of 1996, Friends for Fasi began paying a reduced rate of \$3,500 per month, agreed upon by Longevity only after the intervention of a Mr. C. T. Wong (a shareholder of Longevity and a suspected CAL employee) for space for which they had up until that point paid only \$800. See Attachment 4.

Contrary to the assertions presented by CAL and Longevity, in their response dated February 17, 1997, Frank Fasi and Friends for Fasi, state that the Fasi campaign utilized the office and storage space during campaigns in 1982, 1984, 1988, 1992, 1994 and 1996. See Attachment 5. Although Fasi claimed that the space was only used for campaign purposes a few

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months for each of those years, Friends for Fasi's expenditure reports from January 1990 through November 1996 indicate that each monthly rental payment to Longevity was paid in full by Fasi's campaign committee. Indeed, Mr. Fasi vacated the office space approximately a week after suffering his second recent electoral defeat,² a primary bid for Mayor of Honolulu.³ As the foreign national prohibition requires a "connection with an election to any political office" and the evidence demonstrates a clear nexus between the activity in this matter and six state elections, the information sought is "reasonably relevant" to the purpose of an investigation within the scope of this agency's authority. *United States v. Morton Salt Co.*, 338 U.S. 632 at 652 (1950).

Third, CAL and Longevity maintain that the Subpoenas are in whole or in part overbroad, burdensome, and oppressive. It is well established that an administrative agency subpoena or order will be enforced so long as it was issued for a proper purpose, the information sought is relevant to the purpose, and the statutory procedures were observed. *See United States v. Powell*, 379 U.S. 48, 57-58 (1964); *See, e.g., Morton Salt Co.*, 338 U.S. 632.

The Subpoenas and Orders were issued for the proper purpose of investigating, pursuant to Commission findings of "reason to believe," 2 U.S.C. § 437g(a)(2), whether CAL and Longevity violated 2 U.S.C. § 441e by being involved in the making of in-kind contributions by alleged foreign nationals or individuals being influenced and/or controlled by foreign nationals. The Subpoenas and Orders seek to discern the identity of individuals who may be able to provide

² Fasi was also defeated in the 1994 Gubernatorial General Election.

³ The 1996 Honolulu Mayoral Primary Election was held on September 21, 1996. Fasi informed that management at Longevity on October 1, 1996 that he was vacated the space at the Cultural Plaza.

relevant evidence such as requests for information about the legal relationships between CAL, a corporate arm of the Taiwanese government, and Longevity and its employees who operated the Cultural Plaza.

In short, the Subpoenas and Orders solicit information that will allow the Commission to make a determination of whether the violations with which the Respondents have been charged in fact occurred. As such, the Subpoenas and Orders are both proper and relevant. Because the Commission found reason to believe the Respondents violated several sections of the Act and issued the appropriate Subpoenas and Orders, statutory procedures were followed. *See* 2 U.S.C. 437(g)(a)(2); 2 U.S.C. § 437(d)(a)(1) and (3).

CAL's assertion that the Subpoenas and Orders are overly broad and burdensome was addressed at a negotiation meeting with counsel for CAL. At that time, this Office offered to negotiate with counsel the scope of the Subpoena hoping to curtail escalation to subpoena enforcement proceedings. Although counsel originally opposed negotiating partial compliance with this Office, continued communications have yielded a representation that CAL is willing to comply with the Subpoena and Order to the extent of providing information dating back to 1992, rather than 1984, the latter which is the time period required by the Subpoenas and Orders. See Attachment 6. Corporate documents and testimony dating back to January 1, 1984 would be relevant to the investigation because that is when the Mr. Fasi's lease was entered and when CAL seconded employees to Longevity. This Office is currently at a disadvantage with respect to its lack of specific information concerning linkages between CAL, Longevity, the Cultural Plaza, and conclusive evidence regarding the foreign national nexus. However, this Office is viewing CAL's representation as a movement toward compliance with the Commission's Subpoena and Order. Accordingly, while these negotiations are underway, in a good faith effort

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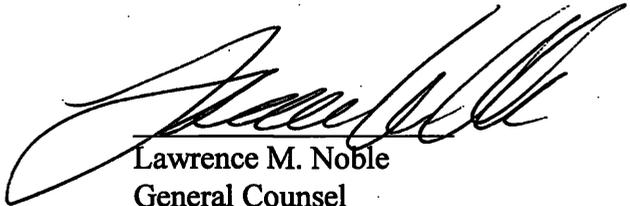
at reaching a compromise, this Office is not making any recommendations regarding CAL's Motion to Quash. Regarding Longevity, however, based on the foregoing and that they have not complied or made any indication that they wish to negotiate an agreement regarding the Commission's Subpoena and Order, this Office recommends that the Commission deny its Motion to Quash. In addition, to expedite resolution of this matter, this Office recommends that the Commission grant it contingent authority to file a civil suit if Longevity fails to comply with the Commission's Subpoena and Order within 30 days. This Office will make every effort to negotiate with Longevity regarding the scope of the Subpoena and Order so as to avoid the necessity of filing a civil suit.

III. RECOMMENDATIONS

1. Deny the Motion to Quash of Longevity International Enterprises Corporation.
2. Grant the Office of the General Counsel contingent authority to file a civil suit to enforce the Commission's Subpoena and Order to Longevity International Enterprises Corporation if it fails to comply within 30 days.
3. Approve the appropriate letter.

Date

11/7/97


Lawrence M. Noble
General Counsel

Attachments:

1. CAL's Motion to Quash
2. Longevity's Motion to Quash
3. Correspondence from Longevity to Fasi, dated Nov. 6, 1995
4. Correspondence from Longevity to Fasi, dated June 10, 1996
5. Correspondence from Fasi, dated February 17, 1997
6. Correspondence from CAL, dated November 6, 1997

Staff Assigned: Nancy E. Bell

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