



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary  
 FROM: Office of General Counsel *rd*  
 DATE: August 26, 1999  
 SUBJECT: MUR 4594 - General Counsel's Rpt.

The attached is submitted as an Agenda document for the Commission Meeting of Tuesday, September 14, 1999

Open Session \_\_\_\_\_ Closed Session XX

CIRCULATIONS

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**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
)  
Friends for Fasi and William Rose, )  
as treasurer )  
China Airlines )  
Longevity International Enterprises )  
Corporation )  
Frank Fasi )

MUR 4594

**GENERAL COUNSEL'S REPORT**

I. STATEMENT AND BACKGROUND OF THE CASE

This matter was generated from information ascertained by the Federal Election Commission ("Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). This matter involves the possible acceptance of in-kind contributions, by Frank Fasi, the former mayor of the City and County of Honolulu, and Friends for Fasi, the campaign committee for Frank Fasi, from 1984 through 1996, in the form of reduced rental costs for office space at the Chinatown Cultural Plaza Shopping Center ("Cultural Plaza"), the owners of which may be foreign nationals or may have been influenced and/or controlled by foreign nationals.

On December 3, 1996, the Commission found reason to believe that China Airlines, Ltd. ("CAL"), Longevity International Enterprises Corporation ("Longevity") and Friends for Fasi and its treasurer and Frank Fasi ("Fasi"), violated 2 U.S.C. § 441e and approved Subpoenas for Documents and Orders for Written Answers for all respondents. A Comprehensive Investigative

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Report ("Investigative Report") was circulated on February 24, 1999, delineating the culmination of this Office's investigative efforts.

On April 7, 1999, this Office transmitted General Counsel's Briefs to Longevity and Fasi (collectively "Respondents"). See General Counsel's Brief to Longevity, dated April 7, 1999, & General Counsel's Brief to Fasi, dated April 7, 1999, (collectively "GC Briefs" or "Briefs"). The Briefs recommend that the Commission find probable cause to believe that Respondents violated 2 U.S.C. § 441e through the providing of and accepting of an in-kind contribution, in the form of reduced rental costs, which originated from foreign nationals. Longevity requested and was granted a twenty-four day extension to respond to its brief. Fasi requested and was granted two extensions, the first for twenty-four (24) days and the second for an additional three days, to respond to its brief. According to Fasi, the extensions were required so that a real estate expert, who was currently "out of the country" could be contacted to presumably conduct an appraisal of the Cultural Plaza. No such appraisal or explanation for its absence accompanied the response brief.

## II. ANALYSIS

This Office's analysis of this matter is contained in the Comprehensive Investigative Report, dated February 24, 1999 ("Investigative Report") and the Briefs. The responses received from respondents do not assert any novel legal arguments<sup>1</sup> although respondents do renew their

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<sup>1</sup> Respondents continue to assert 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 1984 and, therefore, is not actionable pursuant to the statute of limitations. In fact, as indicated originally in the General Counsel's Report dated September 29, 1997, and in the subsequent Briefs although the alleged activity commenced in January 1984 when Mr. Fasi occupied the office space, it continued through 1996 when he vacated the premises. In this matter, each monthly rent subsidy that occurred during each of the past five years would constitute a separate violation. Furthermore, the Commission may be able to obtain injunctive relief for violations in this matter that occurred prior to the past five years. See United States v. Banks, 115 F.3d 916, 919 & n.6 (11<sup>th</sup> Cir. 1997); FEC v. The Christian Coalition, 965 F. Supp. 66 (D.D.C.

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argument that 2 U.S.C. § 441e does not apply to state and local elections and, therefore, the Commission lacks jurisdiction to proceed with this claim. Neither Longevity nor Fasi address the evidence of foreign national control and funding of Longevity, the owner of the Cultural Plaza, contained in the GC Briefs, although they do contest the validity of this Office's interview with Mr. Chang. The major thrusts of respondents' factual arguments, which are essentially the same as those they submitted in their previous responses, will be analyzed along with their Section 441e argument in the following four sections. Each will be discussed in turn.

A. Applicability of Section 441e to state and local elections

Both Longevity and Fasi assert that case law bars this claim and that Section 441e is only applicable to Federal elections. One district court, as cited to by respondents, recently held the foreign national prohibition at Section 441e applicable only to "contributions" for federal elections, U.S. v. Trie, 23 F.Supp. 2d 55 (D.D.C. 1998); see also U.S. v. Kanchanalak, 1999 WL 55169 (D.D.C.), where the same court reaffirmed its Section 441e analysis from Trie.

The Trie court found "clear statutory language" and an "absence of any indication in the statute or legislative history that Congress intended Section 441e to apply to soft money donations," concluding that the prohibition only applies to hard money contributions. Trie at 60. Applying a strict statutory construction, the district court deemed Section 441e applicable to only federal elections because of the provision's use of the term "contribution" to describe the prohibited funds. The court reasoned that despite the provision's clear admonishment that

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(footnote 1 continued from the previous page)  
 1997); FEC v. NRSC, 877 F. Supp. 15, 20-21 (D.D.C. 1995); but see FEC v. Williams, 104 F. 3d 237 (9<sup>th</sup> Cir. 1996), cert. denied, 118 S.Ct. 600, (U.S. Dec. 8, 1997) and FEC v. National Right to Work Committee, 916 F. Supp. 10 (D.D.C. 1996) (Section 2462 bars the Commission from obtaining a civil penalty or injunctive relief for activity that occurred prior to five years of the violation).

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foreign funds were prohibited “in connection with an election to any political office,” the provision’s use of the term “contribution” only related to federal elections because of that term’s narrowing definition in Section 431 of the Act. Trie at 59-60, see also, 2 U.S.C. §§ 441e(a) (emphasis added) and 431(8).

The opinion neither mentioned nor paid deference to the Commission’s long-standing interpretation of this provision.<sup>2</sup> Furthermore, the court failed to fully consider Section 441e’s legislative history which firmly establish its applicability to all elections – federal and non-federal.<sup>3</sup> The Commission has promulgated a regulation for this section, consistently interpreting it as applying to federal, state and local election. See 11 C.F.R. §§ 110.4(a). In contrast the Act contains numerous references to “Federal office,” defined at 2 U.S.C. § 431(3) to refer solely to federal elections.

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<sup>2</sup> The Commission has consistently applied this prohibition to both federal and non-federal elections. See 11 C.F.R. § 110.4(a)(1); see, e.g., MURs 2892, 3460, 4398 and 4638.

<sup>3</sup> Section 441e originated in a national security statute with broad application. The prohibition on foreign national contributions has its origin in the 1966 amendments to the Foreign Agents Registration Act of 1938 (“FARA”), 52 Stat. 631-633, codified at 22 U.S.C. §§ 611-621. The prohibition was amended as part of the Federal Election Campaign Act Amendments of 1974, with the prohibition on contributions from agents of foreign principals becoming a broader prohibition on foreign contributions:

Whoever, being a foreign national directly or through any person, knowingly makes any contribution of money or other thing of value or promises expressly or impliedly to make any such contribution, in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office...

Pub. L. No. 93-443, 88 Stat. 1267. The author of the amendment noted Congress’ concern with foreign influence over “American political candidates,” and broadly stated that the provision “would ban the contributions of foreign nationals to campaign funds in American political campaigns.” 120 Cong. Rec. 8782 (March 28, 1974) (statement of Senator Bentsen), reprinted in Legislative History of the Federal Election Campaign Amendments of 1974 at 264.

In the Federal Election Campaign Act Amendments of 1976, the foreign national contribution prohibition was moved from Title 18 to Title 2 and re-formulated into its present language. Pub. L. No. 94-283, § 324, 90 Stat. 493. The broad prohibition language, “in connection with an election to any political office,” has remained unchanged since its original enactment in 1966. Senator Bentsen’s reference to “American political campaigns,” not merely federal candidates, and the national security background of Section 441e point toward broad application including state and local, not just federal, contributions.

P.L. 94-443

Section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from sections of the Act dealing solely with federal elections.<sup>4</sup> The legislative history, as well as the Commission's long-standing statutory interpretation demonstrate that the section 441e prohibition on foreign national contributions apply beyond federal elections. As such, the court's, as well as respondents', reading of section 441e renders the phrase "any political office" superfluous and does so in the face of legislative history as to its intended scope. In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections. Therefore, respondents' argument of statutory construction must fail.

B. Interview of Mr. Louis Chang

Both Longevity and Fasi object to what they characterize as a "hearsay" presentation of Mr. Chang's telephone interview. Further, Fasi asserts that "a signed sworn affidavit should be given much more weight than a hearsay statement allegedly from the same witness."

As discussed in the Investigative Report, the purpose of the January 13, 1998 interview was to ask Mr. Chang several follow-up questions based on written responses to an interrogatory he had submitted to this Office on December 3, 1997. During the interview, Mr. Chang provided two staff members with information which appears to confirm the involvement of Frank Fasi, the Committee, Longevity, and CAL in the in-kind contribution 441e scheme discussed in the First General Counsel's Report dated November 26, 1996, and the General Counsel's Report dated September 29, 1997. See Investigative Report, Attachment 1 [hereinafter "Inv. Rpt. Attachment"]

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<sup>4</sup> It is a cardinal principal of statutory construction that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 484 U.S. 439, 451-52 (1988).

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references the same numbered attachment to the Investigative Report]. Most significantly, Mr.

Chang stated that the CAL personnel department had issued the orders for him to work at Longevity. Additionally, he believed 1) CAL to be the owner of the Cultural Plaza, 2) Frank Fasi's rent was a "special case," and 3) Longevity thought that a reduced rent for Fasi would produce advantages from Fasi as the Mayor. Mr. Chang also stated that after Fasi moved into the Cultural Plaza, the Cultural Plaza was placed on a city bus route, received a bus stop, and police patrols in the area increased. In whole, he asserted that Fasi being Mayor at the time influenced the amount that Fasi paid for rent at the Cultural Plaza.

As a result of this interview, a draft affidavit was created, Inv. Rpt. Attachment 2, and numerous attempts by this Office, spanning several months, had been made to obtain an affidavit from Mr. Chang and/or his counsel(s). Finally, this Office received an affidavit of Mr. Chang from his current counsel, Richard K. Griffith. See Inv. Rpt. Attachment 3.

As discussed in the Investigative Report, the substance of the affidavit differed greatly from that of the conversation which was memorialized by this Office. The affidavit failed to mention several of Mr. Chang's aforementioned assertions regarding Fasi's occupancy at the Cultural Plaza, and, in fact, attempts to disavow many of his oral statements. For instance, it implies that Fasi's special monthly rent was based upon a month-to-month tenancy arrangement and structural defects in the particular section of the building that Fasi occupied, rather than upon any perceived benefit that would accrue from Fasi's tenancy. Additionally, the sworn affidavit indicated that the benefits incurred by the Cultural Plaza during Fasi's term in office occurred because of the "growing needs of the community" rather than Fasi's influence.

As made explicit by this Office in the Briefs, this Office has not obtained independent evidence of the improvements to the Cultural Plaza bestowed by the Mayor's Office as described by Chang. But, as discussed in the Briefs, correspondence from the Coordination Council for North American Affairs ("CCNAA"), an arm of the Taiwanese government, reveals that Norman Yu, a resident alien who served as a high-level employee of CAL and the General Manager of Longevity from 1981-1984, was actively fundraising for Fasi and possibly obtained a position on the Honolulu City Government during Fasi's administration.<sup>5</sup> As stated in the Briefs, this piece of information, while not conclusive of an improper relationship between Fasi and Longevity, does buttress the presumption presented by Chang of a *quid pro quo* relationship between Longevity and Fasi based on in-kind contributions in exchange for governmental favors, especially along with the unusual circumstance of an oral lease for far below fair market value rental prices.

C. Calculation of reduced rent

In 1984, the year that Fasi was elected Mayor of Honolulu, Fasi's rent dropped from a base rent of \$0.45 per square foot to a gross rent of \$0.23 per square foot and remained at this price with no written lease for the following 12 years.<sup>6</sup> As demonstrated by the chart of commercial rental rates at the Cultural Plaza attached to the GC Brief, other similarly situated rental space in the Cultural Plaza increased exponentially over the same 12 year period (Fasi held office from 1984-1994).

<sup>5</sup> See Inv. Rpt. Attachment 19. This letter was obtained in MUR 2892. According to the CCNAA, Yu solicited a donation from this explicitly foreign national governmental organization for Mayor Frank Fasi.

<sup>6</sup> Cultural Plaza tenants, according to correspondence supplied by Fasi, e.g. Inv. Rpt. Attachment 8, are typically assessed, in addition to the "base" rent, a prorated common area maintenance fee, real property tax, and 4.16% general excise tax on the total amount due. These additional assessments render the total/gross rent as an amount almost double the "base" rent.

A conservative gross rental rate for Fasi's space at the Cultural Plaza during the years 1994-1996 would approximate \$1.50 per square foot or \$5,155.50 ( $\$1.50 \times 3,437$  sq. ft.) per month.<sup>7</sup> This Office, utilizing this conservative rental rate for the time period 1994 through 1996<sup>8</sup> in Honolulu, indicated in the Briefs that the yearly gross charge representing the ordinary course of business with regard to the Cultural Plaza would have been \$61,866.00 ( $12 \times \$5,155.50$ ) rather than the \$9,486.12 ( $\$.23 \times \$5,155.50$ ) charged to Mr. Fasi and Friends for Fasi by Longevity. Applying these figures to the almost three years at issue, this Office determined that the amount in violation for 1994 - 1996 could equal approximately \$160,000.

In response to Fasi's assertion that this Office's calculations in the GC Brief did not consider increased rental payments by Fasi during the course of 1996, the amount in violation has been recalculated, equaling \$145,242.40<sup>9</sup>, to reflect the variation in the rental payments

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<sup>7</sup> See the discussion of rental costs in Honolulu according to the Comparative Statistics of Industrial and Office Real Estate Markets in the First General Counsel's Report dated November 26, 1996.

<sup>8</sup> As discussed supra footnote 1 and in prior General Counsel's Reports in this matter, the statute of limitations at Section 2462 appears to bar obtaining civil penalties for violations that are more than five years old. See FEC v. Williams, 104 F. 3d 237 (9<sup>th</sup> Cir. 1996), cert. denied, 118 S.Ct. 600, (Dec. 8, 1997).

<sup>9</sup> Therefore, for 1994 through 1995 the amount in violation equals \$104,598.50 ( $(24 \times \$5,155.50) - (24 \times \$800.00)$ ). This figure added to the amount in violation for 1996, \$40,643.90, yields the total figure of \$145,242.40 for the amount in violation for the time period 1994 through 1996.

made by Fasi during 1996 as illustrated by the following chart:<sup>10</sup>

| - MONTH   | RENT PAID  | AMOUNT OF IN-KIND CONTRIBUTION       | RUNNING TOTAL      |
|-----------|------------|--------------------------------------|--------------------|
| January   | \$800.00   | \$4,355.50 (\$5,155.50 - \$800.00)   | \$4,355.50         |
| February  | \$800.00   | \$4,355.50 (\$5,155.50 - \$800.00)   | \$8,711.00         |
| March     | \$800.00   | \$4,355.50 (\$5,155.50 - \$800.00)   | \$13,066.50        |
| April     | \$2,500.00 | \$2,655.50 (\$5,155.50 - \$2,500.00) | \$15,722.00        |
| May       | \$2,500.00 | \$2,655.50 (\$5,155.50 - \$2,500.00) | \$18,377.50        |
| June      | \$1,666.60 | \$3,488.90 (\$5,155.50 - \$1,666.60) | \$21,866.40        |
| July      | \$3,500.00 | \$1,655.50 (\$5,155.50 - \$3,500.00) | \$23,521.90        |
| August    | \$3,500.00 | \$1,655.50 (\$5,155.50 - \$3,500.00) | \$25,177.40        |
| September | \$0.00     | \$5,155.50 (\$5,155.50 - \$0.00)     | \$30,332.90        |
| October   | \$0.00     | \$5,155.50 (\$5,155.50 - \$0.00)     | \$35,488.40        |
| November  | \$0.00     | \$5,155.50 (\$5,155.50 - \$0.00)     | <b>\$40,643.90</b> |

In the responses received from Fasi and Longevity, respondents assert that the rent paid by Mr. Fasi was within the range of reasonable market rates for the space leased in the relevant time. Respondents also claim that the office classifications discussed in the Briefs are in error, the rent in the Cultural Plaza varies, several tenants of the Cultural Plaza, currently and historically, have paid very low or effectively no rent for their space due to structural defects, and commercial vacancy rates increased dramatically during the period 1992-1996. Further, Longevity's and Fasi's responses incorporate the affidavit of Robert Hastings, which was originally submitted by China Airlines, Ltd., another respondent in this matter.<sup>11</sup> See Inv. Rpt. Attachment 9.

<sup>10</sup> This information is evidenced in Fasi expenditure reports and correspondence produced by Respondents.

<sup>11</sup> In reviewing Fasi's campaign reports, this Office recently discovered that Hastings' firm, Hastings, Conboy, Braig & Associates, Ltd. made a \$500.00 contribution to Friends for Fasi on June 30, 1993, suggesting a possible lack of impartiality in Mr. Hastings' analysis of the Fair Rental Value of Fasi's space at the Cultural Plaza.

The responses, as demonstrated by the resubmission of Mr. Hastings' affidavit, fail to address any of the factual assertions presented in the Briefs and fail to provide any alternative system of office classification for the twelve year period in which Mr. Fasi leased space in the Cultural Plaza for \$800.00 "gross" a month. As discussed in the Investigative Report, Mr. Hastings did not rely upon any documentary evidence in devising his appraisal. Inv. Rpt. Attachments 10 & 11. Moreover, Fasi's failure to submit an additional rental appraisal of the Cultural Plaza in their response may indicate a reluctance on the part of any other Honolulu real estate expert to support respondents' assertions as to the Fair Rental Value ("FRV") of Fasi's space during the relevant time period.

Most notably, both respondents fail to address the chart of rental values at the Cultural Plaza appended to the GC Brief which is based upon respondents' own document production and continue to argue that an undesirable locale contributed to Fasi's precipitously low rental payment from 1984 through 1996. As such, they ignore the existence of leases for commercial entities renting space similarly sized to or located as Fasi's at the Cultural Plaza as discussed in the Investigative Report and the Briefs commanding "base" rental prices ranging up to \$1.41 per square foot. See Inv. Rpt. Attachment 12.

Finally, it remains implausible that current market conditions would justify that Fasi's rent was lowered by nearly one-half (from \$1,546.65 to \$800.00) in 1984 at the termination of his written lease and the commencement of an oral agreement for the same rental space.

Respondents continue to ignore the unusual fact that the amount of Mr. Fasi's monthly rent for this commercial space remained unchanged, neither increasing nor decreasing, over a span of

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twelve years while by 1996 the "going rate" on Fasi's space equaled \$6,000.00 according to documents produced by Longevity. See Inv. Rpt. Attachment 8.

D. Space in question used in connection with any campaign

Fasi and Longevity contend that facts "already known" to the Commission demonstrated 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. Contrary to the assertions presented by respondents in their response briefs, Frank Fasi and Friends for Fasi stated explicitly in their February 17, 1997 interrogatory response that the Fasi campaign utilized the office and storage space during campaigns in 1982, 1984, 1988, 1992, 1994 and 1996. See Inv. Rpt. Attachment 5. Although Fasi claimed that the space was only used for campaign purposes a few 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. Inv. Rpt. Attachment 6. Indeed, Mr. Fasi gave notice to vacate the office space shortly after suffering his 1996 electoral defeat<sup>12</sup>, a primary bid for Mayor of Honolulu.<sup>13</sup> Therefore, the evidence demonstrates a clear "connection with an election to any political office."

III. SUMMARY

Based on the aforementioned investigation, this Office has gathered information and documentation which confirms the foreign national nexus essential to demonstrating the elements of a Section 441e violation by Fasi and Longevity in this matter. Foreign national

<sup>12</sup> Fasi was also defeated in the 1994 Gubernatorial General Election.

<sup>13</sup> The 1996 Honolulu Mayoral Primary Election was held on September 21, 1996. Fasi informed the management at Longevity on October 1, 1996 that he was vacating the space at the Cultural Plaza, and he apparently did so by November 15, 1996. Inv. Rpt. Attachment 8, pp. 26-28.

control of Longevity's board of directors, as well as the selection of its board of directors by the shareholders, and the board's subsequent participation in all of Longevity's substantive decisions is clear, inevitable, and uncontested by both Longevity and Fasi. As such, there is definitive evidence of foreign national control and initial funding of Longevity.

As delineated above and in previous reports, Fasi's reduced rental payment qualifies as a "contribution of money or other thing of value" under Section 441e. With regard to Fasi's, the recipient respondent's, involvement in this 441e scheme, the aforementioned information supports statements asserted by Chang during his interview, discussed *supra* pp. 2-3, that Fasi's rent was a "special case" for which Fasi reasonably had notice. Longevity stated that, except for Fasi "as far as we know, there was never a situation where a tenant was allowed in a space without any written lease."

It is difficult to fathom that Frank Fasi and Friends of Fasi would have been unaware of the discrepancy in their rental payments in comparison to the Honolulu rental market in general and the Cultural Plaza in specific. As discussed in the Investigative Report, Fasi not only had reasonable notice of the "contribution" but also an indication of the foreign national composition of Longevity's management, board of directors, and ownership. Fasi, in the initial subpoena response, states that "[i]t is believed that the Cultural Plaza is *owned by an American-based corporation with Taiwanese ownership, Longevity International*, but that it is *managed by.....since 1994, Taiwanese officials*." This statement intimates Fasi's knowledge of the foreign national make-up of Longevity's management and board of directors.

Accordingly, the Office of General Counsel recommends that the Commission find probable cause to believe Longevity International Enterprises Corporation violated

2 U.S.C. § 441e by providing an in-kind contribution, in the form of reduced rental costs to Fasi. Furthermore, the Office of General Counsel recommends that the Commission find probable cause to believe that Friends for Fasi and William Rose, as treasurer, and Frank Fasi violated 2 U.S.C. § 441e by accepting in-kind contributions from Longevity, a foreign national controlled corporation, in the form of reduced rental costs at the Cultural Plaza.

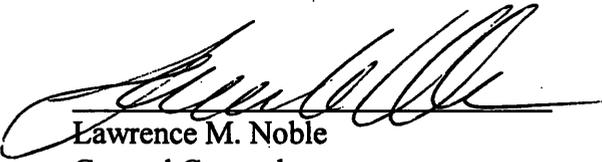
This Office also now recommends that the Commission enter into post-probable cause conciliation with Longevity and Fasi. Attached for the Commission's approval are proposed conciliation agreements

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**IV. RECOMMENDATIONS**

1. Find probable cause to believe that Longevity International Enterprises Corporation violated 2 U.S.C. § 441e.
2. Find probable cause to believe that Friends for Fasi and William Rose, as treasurer, and Frank Fasi violated 2 U.S.C. § 441e.
3. Approve the attached conciliation agreements and the appropriate letters.

Date

8/26/99  
Lawrence M. Noble  
General Counsel**Attachments****Proposed Conciliation Agreements****Staff Assigned: Nancy E. Bell**

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