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FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

APR 22 10 00 AM '99

April 21, 1999

Jose M. Rodriguez, Esq.  
Office of General Counsel  
Federal Election Commission  
999 E Street, N.W.  
6th Floor  
Washington, D.C. 20463

Re: MUR 4884  
Charles Stack and High, Stack, Lazenby, Palahach, et al.

Dear Mr. Rodriguez:

On behalf of Mr. Charles Stack and High, Stack, Lazenby, Palahach, et al. (the "Firm"), this letter is in response to the Commission's finding on March 16, 1999 that there is reason to believe that in 1993, almost six years ago, Mr. Stack and the Firm violated 2 U.S.C. §441e, a provision of the Federal Election Campaign Act of 1971, as amended (the "Act").

Mr. Stack and the Firm strongly deny the assertions set forth in the FEC's Factual and Legal Analysis (the "Staff Analysis"), but even if Mr. Stack engaged in the asserted activity, it would not have been a violation of the law. Moreover, if Mr. Stack's alleged actions were prohibited under the Act, the FEC is barred from assessing any civil penalties, fines or forfeitures against him or his firm for any violations of the Act allegedly committed more than five years ago pursuant to the applicable statute of limitations. Accordingly, we respectfully request that the Commission close MUR 4884 as it pertains to these respondents to avoid the unnecessary costs and expense of pursuing a matter that, even if true, cannot result in the imposition of any penalties against Mr. Stack or the Firm.

A. Background

The Staff Analysis asserts that Mr. Stack and the Firm violated the Act by soliciting a \$5,000 donation on or before May 10, 1993 to the Democratic National Committee's (the "DNC") non-federal (also referred to as "soft money") account from Future Tech International, Inc. ("Future Tech"), a U.S. corporation, that was owned in part by Mr. Mark Jimenez, an

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individual who, at that time, was a foreign national (according to the Staff Analysis Mr. Jimenez obtained permanent resident alien status in July 1994). The sum total of evidence relied upon by the FEC staff to form its conclusion that a violation occurred is one internal DNC document which bears Mr. Stack's name as the solicitor for a 1993 Future Tech non-federal donation to the DNC.

B. Mr. Stack did not solicit a \$5,000 non-federal donation from Future Tech to the DNC

Mr. Stack did not solicit a \$5,000 donation to the DNC's non-federal account from Future Tech or from any person working for or acting as an agent on behalf of Future Tech on or before May 10, 1993. Additionally, Mr. Stack did not solicit a \$5,000 donation to the DNC's non-federal account from Mr. Jimenez on or before May 10, 1993. As he states in the attached sworn affidavit, to the best of his present recollection, knowledge, and belief, he never spoke to, met with, or solicited any donation from Mr. Jimenez or Future Tech in or about May 1993. See Affidavit of Charles Stack.

C. There is no evidence to support the assertion that Mr. Stack violated the Act

The only piece of evidence relied upon by the Commission to form the basis for this action is one page from a July 1993 DNC list of donors which incorrectly states that "Bud Stack" was the solicitor of a \$5,000 non-federal donation by Future Tech. Interestingly, the DNC document relied upon by the Staff Analysis does not include any reference to Mr. Jimenez or his relationship with Future Tech. It simply states that Future Tech made a non-federal donation on May 10, 1993 from its office located in Miami, Florida. This scant evidence does not create a suspicion of a violation, let alone rise to the level of "reason to believe" that Mr. Stack knowingly solicited an illegal contribution from a foreign national.

The Staff Analysis describes in great detail allegations about Mr. Jimenez' status as a foreign national and Future Tech's reimbursement of employees for contributions to federal candidate committees made between February 1994 and September 1996. There is no evidence, however, or suggestion in the Staff Analysis that Mr. Stack had contact with or solicited an illegal contribution from Mr. Jimenez, had any knowledge that Mr. Jimenez was a foreign national, or had any knowledge that Mr. Jimenez was involved in any way whatsoever in the decision-making at Future Tech with regard to the making of a donation to the DNC in 1993. Mr. Stack's affidavit makes clear he had no such knowledge. See Affidavit of Charles Stack.

Mr. Stack does not know how or why his name came to be listed on the internal DNC document relied on in the Staff Analysis, but he has sworn that he did not knowingly solicit a donation from a foreign national or from Future Tech. Mr. Stack has also sworn that he does not know whether a foreign national was involved in the decision making at Future Tech with regard to the making of a May 1993 non-federal donation to the DNC. Quite simply, Mr. Stack did not violate the Act, and the FEC does not have sufficient evidence to form the basis of a complaint against him.

D. The solicitation of a donation to the DNC's non-federal account from a U.S. corporation by Mr. Stack, even if true, is not prohibited by FEC regulations

There is no prohibition under the Act or in the FEC regulations against the solicitation of a donation from a U.S. corporation to the DNC's non-federal account. Future Tech is a U.S. company that was incorporated in 1988 in the State of Florida and it has approximately \$251,261,000 in annual sales, according to the Staff Analysis. Domestic corporations are permitted to make unlimited donations to a national party's non-federal account. On its face then, a \$5,000 donation by Future Tech to the DNC's non-federal account in 1993 was not prohibited. Accordingly, the solicitation of such a donation was *not per se* prohibited.

Under FEC regulations, Future Tech's donation to the DNC's non-federal account may have been prohibited if a foreign national directly or indirectly participated in the decision-making process with regard to the making of the donation, but even so, the solicitation of a donation by a U.S. company is not prohibited. FEC regulations state that a foreign national may not make contributions in connection with U.S. elections and that "[n]o person shall solicit ... a contribution as set out above from a foreign national." 11 C.F.R. §110.4(a)(1) and (2). Future Tech is a domestic company, not a foreign national. The solicitation of a donation from Future Tech, therefore, is not prohibited.

What is prohibited, under FEC regulations and Commission interpretations, is the participation of a foreign national in the decision-making process of a domestic corporation with regard to the making of a contribution in connection with U.S. elections. 11 C.F.R. §110.4(a)(3). Therefore, it would have been permissible (if it had happened) under FEC regulations for Mr. Stack to solicit a donation from Future Tech, a domestic company, but not permissible for Mr. Jimenez, a foreign national, to participate in the decision-making process of Future Tech with regard to the making of a donation to the DNC's non-federal account in 1993.

The Office of General Counsel cannot reasonably assert that Mr. Stack, if he had solicited Future Tech, should have known that Mr. Jimenez was a foreign national or the Mr. Jimenez was a participant in the donation-making process. Given that the absolute lack of any contemporaneous evidence that Mr. Stack had made a knowing solicitation, such an assertion is incredible on its face, given the domestic status of Future Tech.<sup>1</sup>

E. D.C. District Court holds that the Act does not prohibit foreign nationals from making non-federal donations to national party committee

In 1998, a D.C. District Court held that the foreign national contribution prohibition at 2 U.S.C. §441e does not apply to non-federal donations to a national party committee. In *U.S. v.*

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<sup>1</sup> The Commission could not reasonably hold an individual solicitor responsible for soliciting a company without specific knowledge of foreign national participation. Even in the case of a corporate political committee, such as a separate segregated fund of Toyota or Daimler Chrysler, where there is reason to believe that foreign nationals have a role in the company, the Commission has always placed the burden on the contributor, rather than the solicitor, to ensure that foreign nationals have no role.

*Trie*, Crim. No. 98-0029-1 (D.D.C. Oct. 9, 1998), the Court held that “[t]he word *contribution* is a term of art defined by the statute [the Act], and the statutory definition applies only to elections for *federal office*, see 2 U.S.C. §431(a)(8); it therefore does not encompass soft money donations.” As a result, the Act “does not proscribe soft money donations by foreign nationals or by anyone else.” *id.* A donation by Future Tech to the DNC’s non-federal account, therefore, would not be prohibited, even if a foreign national participated in the decision-making process with regard to the making of the donation.

Accordingly, the Office of General Counsel’s interpretation of 2 U.S.C. §441e is overbroad and directly contrary to the law. As stated above, Mr. Stack did not solicit a donation from Future Tech or Mr. Jimenez but, pursuant to FEC regulations and the D.C. District Court’s interpretation of the applicable statute, the solicitation of such a contribution from either would not have been prohibited. Thus, the General Counsel’s Office should dismiss this action against Mr. Stack, because even if he acted as the Staff Analysis asserts, he would not have violated the law.

F. The FEC is barred by the statute of limitations from assessing any civil penalties, fines or forfeitures against Mr. Stack or the Firm, even if the assertions were accurate.

The FEC is barred from enforcing any penalty against Mr. Stack or the Firm for events that occurred more than five years ago, even if such action was a violation of the Act. The Staff Analysis states that the alleged solicitation by Mr. Stack occurred on or before May 10, 1993, more than five years ago. The applicable statute of limitations provides that “an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued...” 28 U.S.C. §2462. “[T] law of this Circuit is clear ...the FEC’s cause of action accrue[s] when the events at issue occurred, and 28 U.S.C. §2462 operates according to its terms to bar the enforcement of any civil fine, penalty or forfeiture for events that occurred more than five years before the Complaint was filed.” *FEC v. The Christian Coalition*, 965 F.Supp. 66, 70 (D.D.C. 1997); *3M Company (Minnesota Mining and Manufacturing) v. Browner*, 17 F.3d 1453 (D.C. Cir. 1994).

As a result, even if the Staff Analysis correctly stated the facts and the law regarding the solicitation of a donation to the DNC’s non-federal account by Mr. Stack from Future Tech on or before May 10, 1993, the FEC is barred by the applicable statute of limitations, as interpreted by the federal court, from enforcing any penalty against him or the Firm. Simply put, the events at issue here occurred nearly six years ago. The General Counsel’s Office, therefore, should close MUR 4884 to avoid the unnecessary costs and expense of pursuing a matter that, even if true, cannot result in the imposition of any penalties against Mr. Stack or the Firm.

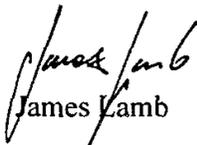
Conclusion

Mr. Stack did not solicit a \$5,000 donation from Future Tech to the DNC’s non-federal account in 1993, but even if he had, it would not have been a violation of the law. Moreover, if

Mr. Stack's alleged actions were prohibited under the Act, the FEC is barred from enforcing any civil fine, penalty or forfeiture for events that occurred more than five years ago, as these did. Therefore, we respectfully request that the General Counsel's Office promptly close MUR 4884 as it pertains to these respondents.

Sincerely,

  
Eric Kleinfeld

  
James Lamb

cc: Mr. Charles Stack

BEFORE THE FEDERAL ELECTION COMMISSION

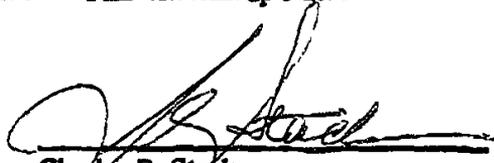
MUR 4884

AFFIDAVIT OF CHARLES R. STACK

Charles R. Stack ("Affiant"), being duly sworn, deposes and says:

1. I am a partner in the law firm of High, Stack, Lazenby, Palahach, Platt & Feiler located at 3929 Ponce de Leon Boulevard, Coral Gables, Florida 33134.
2. I did not knowingly solicit a \$5,000 donation from Future Tech, Inc. or Mark Jimenez to the Democratic National Committee's ("DNC") non-federal account on or about May 10, 1993.
3. I did not knowingly solicit any person who was a representative, employee, agent, or officer of Future Tech or Mark Jimenez to make, or cause to be made, a \$5,000 donation by Future Tech to the DNC's non-federal account on or about May 10, 1993.
4. I have no knowledge of a foreign national participating in the decision-making process with regard to Future Tech's alleged May 10, 1993 donation to the DNC's non-federal account.
5. I do not know why my name appears on an internal DNC document (Bates No. DNC0415905) as the solicitor for a \$5,000 donation from Future Tech to the DNC's non-federal account on or about May 10, 1993.
6. To the best of my recollection, knowledge, or belief, I have never met with or spoken to Mr. Mark Jimenez and with reference to May 10, 1993 (on or about), have no recollection of anyone named Mark Jimenez or of his citizenship status.

Further, Affiant saith not.

  
 Charles R. Stack  
 High, Stack, Lazenby, Palahach, et al.  
 3929 Ponce de Leon Boulevard  
 Coral Gables, Florida 33134

Subscribed and sworn to before me, a Notary Public, on this

21 day of April, 1999.

*who is personally known to me*



