




FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

MEMORANDUM

TO: The Commissioners
Staff Director
Deputy Staff Director
General Counsel

FROM: Office of the Commission Secretary 

DATE: August 7, 2002

SUBJECT: Statement Of Reasons for MURs 4530, 4531, and 4547
John Huang

Attached is a copy of the Statement Of Reasons for MURs 4530, 4531, and 4547 signed by Chairman David M. Mason and Vice Chairman Karl J. Sandstrom.

This was received in the Commission Secretary's Office on Wednesday, August 7, 2002 at 11:21 a.m.

cc: Vincent J. Convery, Jr.
OGC Docket (5)

Attachment

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of)

John Huang)

MURs 4530, 4531, and 4547)

STATEMENT OF REASONS

On January 11, 2001, by a vote of 2-4¹, the Commission voted not to approve the Office of the General Counsel's recommendation to find probable cause to believe that Democratic National Committee Vice Chairman for Finance John Huang violated 2 U.S.C. §§ 441e(a) and 441f, provisions of the Federal Election Campaign Act of 1971, as amended, in connection with \$137,000 in contributions to the Democratic National Committee made through Yah Lin "Charlie" Trie, his wife, his companies, and various other individuals associated with Mr. Trie.

Section 441e(a) prohibits a foreign national from making a contribution directly or through any other person in connection with an election to any political office. This provision also prohibits any person from soliciting, accepting, or receiving a contribution from a foreign national. Section 441f provides that "no person shall knowingly accept a contribution made by one person in the name of another person."

During the 1996 election cycle, Charlie Trie, his wife, his companies, and various other individuals provided \$137,000 in checks to the Democratic National Committee. These contributions were made with funds from foreign nationals. Mr. Trie and the other apparent donors, however, were not foreign nationals. Thus, John Huang did not violate 2 U.S.C. § 441e(a) merely by accepting or receiving these checks. In addition, there is no evidence that John Huang himself solicited the foreign national sources of the contributions at issue here. Nor is there any evidence related to this set of contributions, that John Huang accepted or received contributions directly from those foreign national sources. Moreover, there was insufficient evidence that John Huang knew² that the funds used to make the \$137,000 in contributions at

¹ Commissioners Smith and Wold voted to approve the recommendation. Commissioners Mason, McDonald, Sandstrom and Thomas dissented.

² Although the Commission agrees that "knowingly" encompasses more than actual knowledge of the facts essential to this violation, several Commissioners believe that Mr. Huang would have met this scienter requirement if he knew or had reason to know such facts. See *Freeman United Coal Mining Co. v. Fed. Mine Safety & Health Review Comm'n*, 108 F.3d 358 (D.C. Cir. 1997) (looking to its own and multiple circuit court decisions deciding

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issue were made in the name of another or knew or had reason to know that the contributions were made with funds from foreign nationals.³ Therefore, with respect to these contributions, the Commission could not properly conclude that John Huang violated 2 U.S.C. §§ 441e(a) or 441f.

August 2, 2002

David M. Mason

David M. Mason
Chairman

by ESB

Karl J. Sandstrom

Karl J. Sandstrom
Vice Chairman

how to interpret "knowingly" in a statute, the court upholds a federal agency's formulation of the standard as "knowing or having reason to know"; *See generally Restatement (Second) of Agency* § 9 cmt. d (1958). These Commissioners, however, could not properly so conclude from the testimony or other evidence presented.

³ Vice Chairman Sandstrom dissents as to this standard but agrees it has not been met. The Section 441e standard Commissioner Sandstrom applied required that a recipient of a contribution either had actual knowledge that the contribution was from a foreign national or was aware of facts that would lead a reasonable person to conclude that there was a substantial probability that the source of the contribution was a foreign national.

1554-504-40-22