




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, 4547, 4642  
and 4909 – DNC Services Corporation/Democratic National  
Committee and its treasurer

Attached is a copy of the Statement Of Reasons for MURs 4530,  
4531, 4547, 4642, and 4909 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



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**SENSITIVE**

**BEFORE THE FEDERAL ELECTION COMMISSION**

DNC Services Corporation/ )  
Democratic National Committee and ) MURs 4530, 4531, 4547, 4642 and 4909  
its treasurer )

**STATEMENT OF REASONS**

**I. Background**

On May 9, 2001, by a vote of 5-1,<sup>1</sup> the Commission voted to take no action with respect to the return of a \$7,500 contribution from Ying Chiu Tien to the Democratic National Committee. In doing so, the Commission rejected the Office of the General Counsel's recommendation to find probable cause to believe that the DNC Services Corporation/Democratic National Committee and its treasurer ("DNC") violated 2 U.S.C. § 441e(a) with respect to this contribution. This Statement of Reasons provides the rationale for the Commission's determination.

**II. Applicable Law**

Section 441e(a) of the Federal Election Campaign Act of 1971, as amended, provides that

it shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise 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; or for any person to solicit, accept, or receive any such contribution from a foreign national.

Commission regulations provide that political committee treasurers shall examine all contributions received for evidence of illegality. 11 C.F.R. § 103.3(b). Contributions that present genuine questions as to their illegality may be, within ten days of receipt, either deposited or returned to the contributor.

<sup>1</sup> Commissioners Mason, McDonald, Sandstrom, Thomas, and Wold voted affirmatively. Commissioner Smith dissented.

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11 C.F.R. § 103.3(b)(1). If any such contribution is deposited, the treasurer shall make best efforts to determine the legality of the contribution. *Id.* If a treasurer of a political committee later discovers that a contribution is illegal based on new evidence not available at the time of receipt and deposit, the treasurer is required to refund the contribution to the contributor within thirty days of the date on which the illegality is discovered. 11 C.F.R. § 103.3(b)(2).

### III. Facts

By check dated April 22, 1996, Ying Chiu Tien contributed \$7,500 to the DNC in connection with the April 29, 1996 event at the Hsi Lai Buddhist Temple. General Counsel's Brief in MUR 4530 dated January 22, 2001 ("DNC Brief") at 150; General Counsel's Brief in MUR 4530 dated December 17, 1998 ("Tien Brief") at 3. During the Commission's investigation of this matter, Ms. Tien

submitted a written proffer in which she stated that she invited her husband in Taiwan, who was unable to go. She then contacted two friends in Taiwan, who are both foreign nationals pursuant to 2 U.S.C. § 441e(b). Tien averred that each friend gave her \$2,500 in Travelers' checks. She deposited the checks in her account and then wrote a check to the DNC for \$7,500, which covered her two friends' contributions of \$5,000 and her own \$2,500 contribution. Tien concedes that she made two contributions in her own name that were, in reality, contributions by two foreign nationals."<sup>2</sup>

Tien Brief at 3-4. The DNC received her contribution on April 30, 1996 and refunded it on June 23, 1997. Highly relevant here is what happened during this time period.

After press accounts questioned a number of contributions received by the DNC as possibly being unlawful, between November 1996 and February 1997 the DNC undertook an internal review "in connection with questions that had arisen about a number of contributions to the DNC," "DNC In-Depth Contribution Review," U.S. House Committee on Government Reform and Oversight, *Investigation of Political Fundraising Improprieties and Possible Violations of Law - Interim Report*, H.R. Rep. No. 829, 105<sup>th</sup> Cong., 2d Sess. (1998) ("House Report") at 236, including the contribution from Ying Chiu Tien. The Tien contribution was identified for further review because the DNC's records indicated that it fell into the set of contributions solicited by DNC Vice Chairman for Finance John Huang and credited to the Hsi Lai Temple event.<sup>3</sup>

Based on its investigation, the "DNC In-Depth Contribution Review" identifies the Ying Chiu Tien contribution with a notation, "Insufficient information," *Id.* at 270. By the DNC's review standards, "insufficient information" meant that the committee lacked information to make an "informed

<sup>2</sup>On July 13, 1999, the Commission, by a vote of 6-0, voted to find probable cause to believe that Ying Chiu Tien violated 2 U.S.C. §§ 441e(a) and 441f, but take no further action, close the file as it pertained to her, and send an admonishment letter.

<sup>3</sup>The "Contributions to be Returned" chart notes Tien's contribution with an "(H)" and an "(L)". Doc. DNC 4298592. The legend, on the first page of the chart, states that "(H) indicates contribution solicited by John Huang" and "(L) indicates contribution credited to His Lai Temple event." Doc. DNC 4298589.

determination.” “DNC In-Depth Contribution Review,” House Report at 238.<sup>4</sup> The review was publicly released in February 1997. It was on the basis of this notation and the DNC’s refund of the contribution several months later in June 1997 that the Office of the General Counsel recommended that the Commission find probable cause to believe the DNC violated 441e(a) by allegedly failing to refund Tien’s \$7,500 contribution within thirty days after later discovering that the contribution was impermissible.

#### IV. Analysis

At the time of receipt and deposit of this contribution in April 1996, nothing on the face of the check made it appear that the contribution from Ying Chiu Tien was impermissible. Nor were there any other facts or circumstances apparently known to the recipient which would have made it appear that the contribution was impermissible. There was no evidence presented that the treasurer failed to examine this contribution for evidence of illegality or that the contribution presented a genuine question when received as to whether it was made by a foreign national. Thus, upon receipt of this contribution, the DNC did not fail the requirements of 11 C.F.R. § 103.3(b)(1).

For a number of reasons, this is not a circumstance in which a refund obligation under 11 C.F.R. § 103.3(b)(2) arises. The information, or lack thereof, derived from the DNC’s internal contribution review as to Ying Chiu Tien certainly constitutes “new evidence not available to the political committee at the time of receipt and deposit.” While for other contributions the information developed by the review constituted discovery of illegality,<sup>5</sup> here the discovery is hardly definitive. The Commission could not properly rely on the DNC’s own conclusion that it had “insufficient information” to determine whether or not the contribution was legal to constitute a discovery that the contribution “is illegal.” 11 C.F.R. § 103.3(b)(2) (emphasis added). And because section 103.3(b)(2) requires a refund “within thirty days of the date on which the illegality is discovered,” *Id.* (emphasis added), the DNC’s internal review did not start the clock running.<sup>6</sup>

<sup>4</sup> “In a number of instances, the review did not provide sufficient information upon which to make an informed determination. In general, for an individual who had not been interviewed, the minimum test was a social security number, the length of time since it had been issued (which would be indicative of whether the person was a citizen or permanent resident), his or her ownership or possession of a residence or other property and other indicia that he or she had the wherewithal to make the contribution in question...” “DNC In-Depth Contribution Review,” House Report at 238.

<sup>5</sup> On May 22, 2001, the Commission considered the late refund theory with respect to contributions clearly identified as illegal as a result of the DNC’s internal review. The Commission voted to find probable cause to believe that the DNC violated 2 U.S.C. § 441e(a) in connection with the late refunds of contributions to American Eco Corp. (\$10,000; noted as “Foreign corp.” in the contribution review), Japan Green Stamp America, Inc. (\$85,000; noted as “U.S. sub—foreign national participated in decision”), and T & W Arts & Crafts (USA), Inc. (two contributions totaling \$10,000; noted as “U.S. sub—foreign national participated in decision”). The DNC discovered that these contributions were unlawful for the noted reasons, yet failed to refund the contributions within thirty days of the date on which the illegality was discovered.

<sup>6</sup> The Commission’s conclusion that the DNC was not obligated to return this contribution at that time does not mean that the contribution could not have been refunded voluntarily more promptly. Because even though it is the later discovery of illegality that triggers Section 103.3(b)(2)’s requirement to refund unlawful contributions within thirty days of the date of the discovery, “[i]n instances where the Commission has investigated and determined that there is culpability on the part of the recipient committee, the Commission often views the expeditious refund or disgorgement of unlawful contributions as a mitigating factor in determining an appropriate civil penalty.” Advisory Opinion 1995-19 at 5 available at <http://herndon2.sdrdc.com/ao/ao/950019.html>.

V. Conclusion

The Commission could not properly conclude, based on the evidence presented, that the DNC had in February 1997 discovered that Ying Chiu Tien's contribution was illegal and consequently should have been required to refund the contribution within thirty days as required by 11 C.F.R. § 103.3(b)(2). In any event, the DNC ultimately did refund this contribution. Accordingly, the Commission voted to take no action with respect to the DNC's refund of Ying Chiu Tien's \$7,500 contribution.

August 2, 2002

*David M. Mason*  
David M. Mason *by ESB*  
Chairman

*Karl J. Sandstrom*  
Karl J. Sandstrom  
Vice Chairman

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