RECEIVED FEDERAL ELECTION OFFICE OF GENERAL COUNSEL

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Devens, Nakano, Saito, Lee, Wong & Ching

ATTORNEYS AT LAW

Stanley L. Ching
Lisa-Ann L. Kimura
Bart M. Koza
James H. Q. Lee

James A. Nakano*
Russell K. Saito*
Thomas J. Wong

*A Law Corporation

Suite 1600 Central Pacific Plaza
220 South King Street
Honolulu, Hawaii 96813

Telephone (808) 521-1456
Fax (808) 538-3289

Richard C. Lo
1928 - 1996

Of Counsel:
Paul Devens*
Terrance W. H. Tom
Wilfred H. C. Youth*

LETTER OF TRANSMITTAL

VIA EXPRESS MAIL

TO: Nancy E. Bell, Esq.
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

DATE: May 20, 1999

RE: Longevity International Enterprises Corp., MUR 4594

THE FOLLOWING:

Copies	Date	Description
original + 1 copy	5/20/99	Response of Longevity International Enterprises Corporation to Federal Election Commission General Counsel's Brief Dated April 7, 1999.

Is (Are) Transmitted Herewith:

( ) For Your Information
( ) For Signature & Return
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REMARKS:

DEVENS, NAKANO, SAITO, LEE, WONG & CHING

By [signature]
Thomas J. Wong

TJW:hh
Enclosures

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Devens, Nakano, Saito, Lee, Wong & Ching

ATTORNEYS AT LAW

Stanley L. C[illegible]
Lisa-Ann L. Kimura
Bart M. Koza
James H. Q. Lee

James J. Nakano*
Russell K. Saito*
Thomas J. Wong

*A Law Corporation

Suite 1600 Central Pacific Plaza
220 South King Street
Honolulu, Hawaii 96813

Telephone (808) 521-1456
Fax (808) 538-3289

Richard C. Lo
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Of Counsel:
Paul Devens*
Terrance W. H. Tom
Wilfred H. C. Youth*

May 20, 1999

VIA FACSIMILE 202-219-3923
AND REGULAR MAIL

Nancy E. Bell, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Longevity International Enterprises Corp./Maybelle Pang
MUR 4594

Dear Ms. Bell:

As per your letter of May 12, 1999, in order to comply with having Longevity's response delivered to you by the close of business on May 21, 1999, we are faxing you the response. Under separate cover, we will mail the original response.

Very truly yours,

DEVENS, NAKANO, SAITO,
LEE, WONG & CHING

By _____
Thomas J. Wong

TJW:hh
cc: Longevity International
Enterprises Corp.

Of Counsel:
DEVENS, NAKANO, SAITO,
LEE, WONG & CHING

THOMAS J. WONG 3054-0
LISA-ANN L. KIMURA 5604-0
1600 Central Pacific Plaza
220 South King Street
Honolulu, Hawaii 96813
Tel. No. (808) 521-1456

Attorneys for Respondent
LONGEVITY INTERNATIONAL
ENTERPRISES CORP.

BEFORE THE
FEDERAL ELECTION COMMISSION

In the Matter of LONGEVITY INTERNATIONAL ENTERPRISES CORP.	MUR 4594

RESPONSE OF LONGEVITY INTERNATIONAL ENTERPRISES CORPORATION TO FEDERAL ELECTION COMMISSION GENERAL COUNSEL'S BRIEF DATED APRIL 7, 1999

Respondent LONGEVITY INTERNATIONAL ENTERPRISES CORPORATION ("LIEC") by and through its attorneys, DEVENS, NAKANO, SAITO, LEE, WONG & CHING, responds as follows to the Federal Election Commission ("FEC" or "Commission") General Counsel's Brief dated April 7, 1999.

I. STATEMENT OF THE CASE

This matter involves an investigation by the FEC in regards to LIEC's leasing of space to Frank F. Fasi in the Chinatown Cultural Plaza Shopping Center located at 100 North Beretania Street, Honolulu, Hawaii 96817. Mr. Fasi at no time during the

periods in question was campaigning for any federal office or election. Despite this, the FEC apparently is choosing to continue to investigate this matter and specifically, the amount of lease rent that was provided to Mr. Fasi.

For the reasons stated in this response, LIEC submits that there are legal and factual grounds for the FEC to dismiss this matter, take no further action, and close the file regarding LIEC in this matter.

II. ARGUMENT

A. LIEC Again Renews Its Argument That The Statute Of Limitations Bars This Claim.

As previously argued, the FEC is investigating a matter based upon a lease that was entered in 1981. Mr. Fasi then vacated the premises in approximately September or October of 1996.

28 U.S.C. Section 2462 states as follows:

> Except as otherwise provided by Act of Congress, an action, suit or proceeding for 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....**

Under 28 U.S.C. § 2462, this federal statute of limitations applies to any actions brought by the FEC for civil penalties, and as set forth in FEC v. Williams, 104 F.3d 237 (9th Cir. 1996), the claim accrues at the time of the alleged offense, not at the time of any discovery of the alleged violation.

In this case, as stated, Mr. Fasi leased the space in 1981 and after the lease expired, Mr. Fasi continued as a holdover

tenant on a month-to-month basis. Because the alleged violation and cause of action were allegedly present when the lease was entered in 1981, the cause of action, if any, was when the lease was entered into.[1]

Therefore, as a matter of law, any claim that the payment of below market value rent accrued more than five years ago is beyond the limitation period.

On page 7 of the General Counsel's Brief, there apparently is some type of concession that the statute of limitations bars the claim and that is why General Counsel limits itself to the time period of 1994 to 1996. However, as stated, it is LIEC's position that the limitation period has run even for any alleged violation for the period of time from 1994 to 1996. Air Transport v. Lenkin, 711 F. Supp. 25, 27-28 (D.D.C. 1989), aff'd 899 F.2d 1265 (D.C. Cir. 1990). (A separate cause of action is not created by each monthly payment and the cause of action begins when the claim first accrued.) The point is any alleged claim accrued at a period of time well over five years ago.

General Counsel cites U.S. v. Banks, 115 F.3d 916 (11th Cir. 1997), which held that § 2462 does not bar claims for injunctive and/or declarative relief. However, Banks is distinguishable from the present case. In Banks, the alleged violation was of the Clean Water Act, and the alleged violator was still discharging toxic chemicals in waterways. The issue was whether

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[1] See lease dated January 30, 1981 between Longevity International Enterprises Corp. and Frank F. Fasi, produced pursuant to a request for documents.

§ 2462 bars any claims for equitable relief and the Court held no. In this case, any claim for injunctive relief appears moot. Even assuming there is an alleged violation, Mr. Fasi at this time has vacated the premises, so injunctive relief to terminate any lease is moot at this time.[2]

B. As A Matter Of Law, The FEC Is Barred From Continuing This Investigation.

The facts are not disputed that at no time was Mr. Fasi a candidate or conducting any campaign for a federal office. Based upon these undisputed facts, the issue is, on what basis is the FEC claiming it has authority to continue this investigation? General Counsel cites no cases or authority to support its position of why the FEC should exercise jurisdiction over what is a totally intrastate matter.

The FEC should not exercise jurisdiction based upon the following grounds:

1. The Case Law Bars The Claim.

While General Counsel does mention U.S. v. Trie, 23 F. Supp.2d 55 (D.D.C. 1998), and criticizes the holding of this decision, the problem with the General Counsel's argument is that this case is still precedent for holding that 2 U.S.C. § 441e is only applicable to contributions for federal elections.

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[2] It should be noted that U.S. v. Banks is not precedent for the Ninth Circuit, and FEC v. Williams, supra, is the precedent for the Ninth Circuit. In FEC v. Williams, the Court held that the five-year statute of limitations applies to all penalties and this precedent therefore controls with respect to this matter.

In Trie, the defendant was charged with various counts that were alleging violations of the Federal Election Campaign Act (FECA). The violations were in connection with contributions solicited for federal compaigns. The issue is whether FECA covers funds used for or donated for state and local campaigns or issue advertising.

The U.S. District Court for the District of Columbia held that any alleged contribution for state and local campaigns is not a violation of 2 U.S.C. § 441e in that § 441e is only applicable to an election for federal office because the definition of "contribution" as used in § 441e is limited by the definition of § 431(8) to that of federal elections.

> It contends, however, that FECA's prohibition of contributions by foreign nationals under 2 U.S.C. § 441e applies to soft money donations as well as to hard money contributions. Govt's Opp. at 17-18. The Court disagrees. [FN5] With one exception, 2 U.S.C. § 441b, which has its own separate definition of the term "contribution," the word "contribution" has been defined by Congress in FECA as "money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A) (emphasis added).

23 F.Supp.2d at _____; 1998 WL 723730 at p. 3.

Therefore, based upon U.S. v. Trie, supra, this investigation should be dismissed and closed by the FEC. General Counsel argues that there has been a violation of § 441e, the very statutory provision which in Trie the District Court for the District of Columbia has held that this statutory provision only applies to an election for federal office and therefore, § 441e

"on its face does not proscribe soft money donations by foreign nationals or by anyone else." Id.

In the case at bar, as stated, there is no showing that Mr. Fasi was campaigning for any federal office and therefore, there cannot be a violation of § 441e since there is no showing of anyone involved in an election for a federal office.

While General Counsel states that the FEC has applied prohibitions to non-federal elections, General Counsel only cites self-serving administrative decisions.[3] In Orloski v. Federal Election Com'n, 795 F.2d 156 (U.S. App. D.C. 1986), the Court stated that "the purposes of the Act (FECA) are to limit spending in **federal election campaigns . . .**" 795 F.2d at 162-63.

In Federal Election Commission v. Akins, 524 U.S. 11, 118 S.Ct. 1777, 141 L.Ed.2d 10 (1998), in reviewing a decision by the FEC as to whether an organization was a political committee under FECA, the U.S. Supreme Court noted as follows:

> The Act states that a "political committee" includes "any committee, club, association or other group of persons which receives" more than $1,000 in "contributions" or "which makes" more than $1,000 in "expenditures" in any given year. This broad definition, however, is less universally encompassing than at first it may seem, for later definitional subsections limit its scope. The Act defines the key terms "contribution" And "expenditure" as covering only

[3] The FEC's administrative interpretation has been overturned and not followed in decisions by the Supreme Court and various Courts of Appeal. Chamber of Commerce v. FEC, 76 F.3d 1234 (D.C. Cir. 1996) (FEC's interpretation of "member" was arbitrary and capricious); Simon v. FEC, 53 F.3d 356 (D.C. Cir. 1995) (FEC's interpretation of statutory time limits was rejected based upon the plain mandate of FECA).

those contributions and expenditures that are made **"for the purpose of influencing any election for Federal office."** ss 431(8)(A)(i), 9(A)(i), 118 S.Ct. at 1781. (Emphasis added.)

The Courts have also held that where "the text of the statute is clear, we must give effect to the unambiguously expressed intent of Congress." Simon v. FEC, 53 F.3d 356 (D.C. Cir. 1995).

Clearly, there is nothing in the statutory provision of FECA that states that Congress intended to have this law apply to non-federal elections and now based upon U.S. v. Trie, supra, it is questionable whether § 441e is applicable to the case at bar since, factually, there is no contribution to the election of a federal office being involved.

2. FEC Should Abstain From Exercising Jurisdiction Over What Is A Purely Local Hawaii Matter.

As previously stated, the undisputed facts are that this alleged violation had nothing to do with any federal election. It is purely at best a local matter within the State of Hawaii and why the FEC would want to exert jurisdiction over a purely local Hawaii matter is questionable and also raises a constitutional issue of why the FEC is basically investigating a matter that involves matters of a purely state and not federal nature. At best, if any, this matter should be with the jurisdiction of the local Hawaii election authorities, not with the FEC.

The State of Hawaii, in its Hawaii Constitution, has a constitutional amendment on campaign spending. Specifically,

Article II, Section 6, of the Hawaii Constitution states as follows:

> Limitations on campaign contributions to any political candidate, or authorized political campaign organization for such candidate, for any elective office within the state shall be provided by law.

Under Haw. Rev. Stat. Chapter 11, the State of Hawaii has established a law on elections and in fact under this law, a Campaign Spending Commission is established to investigate matters relating to elections that occur in the State of Hawaii. Clearly, the United States Supreme Court has held that the essence of federalism is that the States must be free to develop a variety of solutions and each state retains a significant measure of sovereign authority. Addington v. Texas, 441 U.S. 418, 99 S. Ct. 1804, 60 L.Ed.2d 323 (1979); EEOC v. State of Ill., 69 F.3d 167 (7th Cir. 1995).

Furthermore, under the "clear statement" rule of law, this requires that any federal encroachment upon a state's sovereignty must be made only by a clear statement of congressional intent to do so. In re Brentwood Outpatient, Ltd., 43 F.3d 256 (6th Cir. 1994) cert. denied, 514 U.S. 1096, 115 S.Ct. 1824, 131 L.Ed. 2d.

In the case at bar, clearly, no federal election is involved and this matter clearly involves issues of a purely State of Hawaii matter. The State of Hawaii has its own constitution and law to regulate such matters and there is no showing why the FEC

should infringe on Hawaii's sovereignty on this particular issue.[4]

Furthermore, General Counsel has not established or shown how FECA applies to issues involved in this matter. As stated, the law itself is to regulate candidates for federal elections and there is nothing in the statute itself that implies that FECA applies to matters that do not involve federal elections.

C. General Counsel's Argument Is Based Upon Facts That Are Disputed And In Error.

1. Credibility Of Mr. Louis Chang.

On pages 4-5 of the General Counsel's Brief, General Counsel based part of his allegation on a telephone interview and complains about a subsequent affidavit that is inconsistent with the alleged telephone interview with a staff member. While the witness is not identified in the General Counsel's Brief, LIEC believes the witness General Counsel is referring to is a Mr. Louis Chang, the former Operations Manager of LIEC, who was LIEC's Operation Manager from approximately 1981 until 1995.

First, LIEC objects to the hearsay presentation of the alleged telephone interview. Furthermore, it appears that this staff member has now become or would become a witness in this

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[4] For example, in an opinion by the Department of the Attorney General of the State of Hawaii, which is an opinion on whether the Hawaii Constitution requires an elected official to resign from public office, while the Attorney General found that the Hawaii Constitution would require a county or state public official to resign if he or she seeks a federal elective public office, it is not applicable to a federal elective official as this would be an infringement and a bar to a federal office. Clearly, the state cannot infringe on the federal government and also the federal government should not be infringing on a state. See Op. No. 86-4.

matter which would lead to a further issue of whether General Counsel should disqualify itself from this proceeding as this conversation may become an issue as to exactly what was stated.

What was eventually presented to the FEC was an affidavit of Mr. Louis Chang and to attempt to raise an issue of the inconsistency of the affidavit based upon a hearsay evidence of a telephone interview where there is no sworn statements as to the telephone interview should be stricken.

Mr. Chang apparently had retained legal counsel, a Mr. Richard Griffith, after being contacted in this matter. Mr. Griffith can be contacted and he will state that Mr. Chang was adamant that what the staff member is stating is not consistent with Mr. Chang's recollection of the January 13, 1998 telephone interview.

Mr. Chang's affidavit, therefore, is the only evidence that should be considered and, as stated in the affidavit, Mr. Fasi's rent was in no way in consideration for installing a bus route or increasing police patrols.

2. Independent Verification Of The Alleged "Quid Pro Quo."

On page 10 of the General Counsel's Brief, General Counsel admits that it has no independent evidence that because Mr. Fasi received reduced rent, LIEC was able to obtain 1) a city bus route, bus stop and 2) increased police patrols.

First, the reason why General Counsel has not received any independent evidence is because no such independent evidence exists.

With respect to the City and County of Honolulu bus routes, the bus is under the authority of the Oahu Transit Services, Inc. Bus routes and bus stops and where such routes should be placed usually begin with neighborhood concerns being presented to what are known as neighborhood boards. These boards are basically volunteers who are elected from each neighborhood and which review issues which are concerns to that particular neighborhood. If a neighborhood board wants a bus route and the board votes on it, it is then presented to Oahu Transit Services, Inc., who brings it up with the Department of Transportation of the City. The Department of Transportation then presents the proposed bus route to the City Council who votes on the matter. If the FEC wants to verify this, Oahu Transit Services can be contacted.

The point is, even if the Mayor wanted a bus route or a bus stop in a particular area, the Mayor does not have the "final say" in the matter. It is the City Council which votes where the bus routes should be placed.[5]

As for any increase police patrols, there is no evidence that the Mayor made or demanded such increase. Again, such increase, if it took place, would be determined by the Police of Chief. Furthermore, the area in question in the past ten years has seen an increase in the community growing. For example, there is Honolulu Tower and Honolulu Park Place which are condominium projects which have been built in the years in

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[5] FEC can contact the administration of Oahu Transit Services, Inc., at (808) 848-4400 to verify this.

question. The point is, there is no evidence that there was an increase in police patrols. Furthermore, if in fact such police patrols did increase, there is no evidence it was because of any reduced rent to Mr. Fasi but was probably due to the increase in residents living in the area. For example, a police substation has been opened, which is approximately two blocks from LIEC's property. However, the opening of this police substation was again primarily due to the increase in residents living in the community.

3. No Evidence That The Space In Question Was Used In Connection With Any Campaign.

General Counsel apparently has limited the time period to 1994-1996.

Even with this limitation, the issue is whether, as required under 2 USC § 441e, the space was used "in connection with an election."

Mr. Fasi had other business ventures and therefore, if the space was not being used with respect to an election, what rent, if any, was negotiated would not be within the jurisdiction of the FEC to investigate.

Therefore, with respect to the period of 1994-1996, from the public records, Mr. Fasi ran for Governor in 1994 and lost and therefore was out of any elected office. He again ran or attempted to run for Mayor again but lost in a primary race in September 1996.

Therefore, even with the period of time from 1994-1996, with respect to the alleged violations, you are basically limiting

this to a few months in 1994 and a few months in 1996 at best to show it was being used for election-related purposes.

4. The Methodology Of Attempting To Calculate The Reduced Rent Is Questionable.

General Counsel, at page 7 of its brief, states that for the three years in question, that being 1994-1996, the alleged violations would amount to $160,000. To support this, Attachment 1 is an exhibit to General Counsel's Brief. However, if one reviews Attachment 1, it is not clear how the $160,000 was calculated.[6]

Such evidence or argument should be stricken. General Counsel is now apparently taking the position that it has expertise in Honolulu real estate prices when there has not been any expert evidence presented to support such findings.

It is questionable why the "mean" rent should be the standard. The "mean" is also being used without taking into consideration any comparable spaces that are being leased.

For example, the tenants using ground floor spaces obviously would have commanded higher lease rent due to more foot traffic.

Also, General Counsel apparently discounts any of the following charitable organizations which were paying $1.00 a year in rent. Those tenants were as follows:

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[6] If you review Attachment 1 to the FEC's brief, it is unclear how the figure of $160,000 was arrived at, as there is no explanation of the methodology used to formulate this figure.

1) Space No. 204/306
Area: 11,310 s.f.

Tenant:

03/01/92 to 02/28/95
Rent: $1.00/Year

03/01/95 to 02/28/05
Rent: $1.00/Year

2) Space No. 301
Area: 3,958 s.f.

Tenant:

01/01/92 to 12/31/94
Rent: $1.00/Year

01/01/95 to 12/31/04
Rent: $1.00/Year

3) Space No. 302
Area: 2,828 s.f.

Tenant:

01/01/92 to 12/31/94
Rent: $1.00/Year

01/01/95 to 12/31/04
Rent: $1.00/Year

4) Sun Yat Sen Building
Area: 17,705 s.f.

Tenant:

01/01/84 to 12/31/88 + 5 yr. option (01/01/89 to 12/31/93)
Rent: $1.00/Year

01/01/94 to 12/31/96
Rent: $1.00/Year

01/01/97 to 12/31/97
Rent: $1.00/Year

01/01/98 to 12/31/98
Rent: $1.00/Year

General Counsel argues that by presenting the charitable organization leases, LIEC appears to be arguing that Mr. Fasi was likened to a charitable organization. LIEC disputes this. What was being presented is that these spaces occupied by these charitable organizations are on the second floor of a building that has structural problems. Therefore, there being less foot traffic and the less desirability of being on the second floor, it is more difficult to find commercial tenants on the second floor. The point is, LIEC is not stating that Mr. Fasi was being treated like a charity but because of the somewhat undesirability of leasing the second floor space, it was at times more desirable to at least have a tenant occupying the space, paying some rent.

China Airlines submitted an affidavit of Robert Hastings, a certified expert appraiser, a copy of which is attached hereto as Exhibit "1" and incorporated herein by reference. Being that Mr. Hastings is an appraiser licensed in Hawaii, this is the only evidence that should be considered. In Mr. Hastings expert opinion, what was paid as rent by Mr. Fasi was within the range that Mr. Hastings, in his expert opinion, felt should be paid.

III. CONCLUSION

For the foregoing reasons, LIEC requests that the FEC dismiss this matter, take no further action, and close this file in regard to LIEC.

DATED: Honolulu, Hawaii, MAY 20 1999.

THOMAS J. WONG
LISA-ANN L. KIMURA
Attorneys for Respondent
LONGEVITY INTERNATIONAL
ENTERPRISES CORP.

In the Matter of LONGEVITY INTERNATIONAL ENTERPRISES CORP., Before the Federal Election Commission, MUR 4594; RESPONSE OF LONGEVITY INTERNATIONAL ENTERPRISES CORPORATION TO FEDERAL ELECTION COMMISSION GENERAL COUNSEL'S BRIEF DATED APRIL 7, 1999