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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

SECRETARIAT

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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 5336

DATE COMPLAINT FILED: November 19, 2002

DATE OF NOTIFICATION: November 26, 2002

DATE ACTIVATED: October 24, 2003

EXPIRATION OF SOL: October 4, 2007

COMPLAINANT:

Chris R. Hunt

RESPONDENTS:

Sean O'Keefe

Space Gateway Support, LLC

Yang Enterprises, Inc.

Tom Feeney for Congress and Nancy H. Watkins,
as treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. §§ 431(8), (11)

2 U.S.C. § 437d(a)(9)

2 U.S.C. §§ 441b(a)-(b)

2 U.S.C. § 441c

5 U.S.C. § 1216

5 U.S.C. §§ 7321-26

42 U.S.C. § 2472

5 C.F.R. § 734.302

5 C.F.R. §§ 734.501-04

11 C.F.R. §§ 100.7-100.8, 100.22

11 C.F.R. § 110.1(g)

11 C.F.R. §§ 114.1(j), 114.3-114.5, 114.9

11 C.F.R. § 115.1

INTERNAL REPORTS CHECKED:

FEC Disclosure Reports

FEDERAL AGENCIES CHECKED:

Internal Revenue Service

1 **I. INTRODUCTION**

2 This matter concerns campaign activities that allegedly took place at the National
3 Aeronautics and Space Administration ("NASA") facilities in Florida in support of Tom Feeney,
4 a candidate for the U.S. House of Representatives from the 24th Congressional District in Florida
5 in 2002. On November 19, 2002, Chris R. Hunt, the President of the Transport Workers Union
6 of America, AFL-CIO, Guided Missile Local 525, filed a complaint with the Commission
7 alleging that Sean O'Keefe, the Administrator of NASA; Space Gateway Support, LLC, a NASA
8 contractor; and Yang Enterprises, Inc., a NASA subcontractor, unlawfully used federal property
9 and funds for campaign activities on behalf of Feeney.

10 Specifically, the complaint alleges that Space Gateway Support, LLC ("SGS") used its
11 supervisors to distribute campaign materials during work time on federal property, and that it
12 stored political signs on the property. Complaint at 1-2. The complaint also stated that Yang
13 Enterprises, Inc. ("Yang") held mandatory meetings on federal property during work hours
14 "encouraging" employees to picket the campaign offices of Harry Jacobs, Feeney's opponent in
15 the general election, and that Yang distributed a politically motivated memorandum to all of its
16 employees. *Id.* at 1. Finally, the complaint alleges that Sean O'Keefe abused his position by
17 actively campaigning on behalf of Feeney and by publicly endorsing him. *Id.* at 2.

18 Based on our review of the allegations in the complaint, the responses, and the publicly
19 available information, it appears that there is no evidence that SGS distributed or stored Feeney
20 campaign materials on federal or company property in violation of 2 U.S.C. §§ 441c or 441b.
21 Similarly, it appears there is no evidence that O'Keefe made any contributions to the Feeney
22 campaign either in his official capacity or as a private individual. Thus, we recommend the
23 Commission find no reason to believe that Space Gateway Support, LLC and Sean O'Keefe

1 violated the Federal Election Campaign Act of 1971, as amended ("the Act"). There is also no
2 evidence that indicates that Yang held any meetings regarding the Feeney campaign. The Yang
3 memorandum, however, presents a more difficult question. The memorandum criticizes
4 Feeney's opponent in the heat of the campaign a short time before the general election, but all of
5 the information available appears to show that Yang circulated its memorandum in its own
6 defense, rather than in support of Feeney or in opposition to Jacobs. Under these particular
7 circumstances, we recommend the Commission use its prosecutorial discretion and dismiss the
8 allegations against Yang Enterprises, Inc., and Tom Feeney for Congress and Nancy H. Watkins,
9 as treasurer ("the Committee").

10 II. FACTUAL AND LEGAL ANALYSIS¹

11 A. *Space Gateway Support, LLC*

12 SGS is a limited liability company located in Florida that directly contracts with NASA
13 and the U.S. Air Force.² See <http://www.spacegatewaysupport.com>. It provides its services on
14 site at Kennedy Space Center and Cape Canaveral Air Force Station. *Id.* Under the Act, SGS is
15 subject to prohibitions and limitations as a federal government contractor,³ and may be subject to

¹ The events that are the subject of this complaint occurred prior to November 6, 2002, the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Therefore, unless noted to the contrary, all references to statutes and regulations in this report pertain to those that were in effect prior to the implementation of BCRA.

² "SGS was formed in 1998 to provide a solution for launch support operations for NASA and the Air Force." <http://www.spacegatewaysupport.com/aboutsgs.htm>. When SGS applied for authorization to transact business in Florida its managing members consisted of three corporations: Northrop Grumman Technical Services, Inc., IT Environmental & Facilities, Inc., and Wackenhut Services Inc. See <http://www.sunbiz.org/> (providing company information as listed with the Florida Dept. of State).

³ A federal contractor is defined as a person who contracts directly with the federal government to render personal services, furnish materials, supplies or equipment, or to sell any land or buildings. 2 U.S.C. § 441c(a)(1); 11 C.F.R. § 115.1.

1 them in the same manner as a corporation.⁴ As a federal government contractor, SGS would be
2 prohibited from making contributions toward any "political party, committee or candidate for
3 public office or to any person for any political purpose or use." 2 U.S.C. § 441c(a)(1). A
4 contribution "includes any gift, subscription, loan, advance or deposit of money or anything of
5 value made by any person for the purpose of influencing any election for Federal office" but does
6 not include individual volunteer activity. *See* 2 U.S.C. §§ 431(8)(A)-(B); *see also* 11 C.F.R.
7 § 100.7. The Act also prohibits anyone from knowingly soliciting contributions from federal
8 contractors who are in negotiations for a federal government contract or during the performance
9 of their contract. 2 U.S.C. § 441c(a)(2); 11 C.F.R. § 115.2.

10 Whether SGS is also subject to the prohibitions of 2 U.S.C. § 441b as a corporation
11 depends on whether SGS, a limited liability company ("LLC"), elects to be treated as a
12 partnership, corporation or neither for tax filing purposes by the Internal Revenue Service
13 ("IRS"). 11 C.F.R. § 110.1(g). Generally, an LLC that elects to be treated as a corporation by the
14 IRS is treated as a corporation under the Act, but if it elects to be treated as a partnership or fails
15 to make an election, it is treated as a partnership under the Act. 11 C.F.R. §§ 110.1(g)(2), (3).
16 The election SGS chose to follow for tax purposes is unknown at this time; according to the IRS,
17 the details of a company's tax election are not public information.

18 The complaint alleges that SGS supervisors distributed political yard signs and other
19 campaign literature in support of Tom Feeney to SGS employees, and that those signs were
20 stored on federal property. The complaint puts forth no information based on personal
21 knowledge and does not provide any details to substantiate the allegations. While the

⁴ Corporations are prohibited from making contributions or expenditures of money or of anything of value in connection with any federal election. 2 U.S.C. § 441b.

1 complainant indicated that a security report exists that documents the alleged political activity,
2 neither the complainant nor SGS submitted that report to the Commission. Complaint at 2.

3 In its initial response, SGS acknowledged that a union member reported campaign
4 activity taking place on the property. SGS Response at 1. The response explains that SGS
5 investigated the matter and found that one foreman possessed campaign materials in his office,
6 that he was ordered to remove the materials, and that he complied with the command and was
7 reprimanded. *Id.* at 2. SGS stated the foreman never distributed the materials to SGS employees
8 and that no other similar incidents were reported. *Id.* Further details concerning the
9 investigation, such as the names of witnesses interviewed, were not provided. However, in
10 response to a request for clarification of its initial response, SGS confirmed that the matter it
11 investigated concerned the same incident referenced in the complaint.⁵ See Attachment 1 at 2.

12 While the SGS responses claim the activity that was investigated was an isolated incident,
13 they do not explain how SGS came to that conclusion. However, SGS did stress that the
14 presence of the campaign materials on the company premises was without the knowledge of SGS
15 management. Based on how SGS responded to the foreman's activities, it appears that the
16 foreman's possession of the campaign materials on company premises was not in accord with
17 "the rules and practices" of the company, and may have been in direct contradiction of a specific
18 company policy. See 11 C.F.R. § 114.9(a); SGS response at 2. Thus, there would be no reason
19 to attribute the foreman's activities to SGS.

⁵ On November 19, 2003, this Office sent a follow up letter to counsel for SGS requesting clarification of its initial response. Specifically, we asked whether the chief steward to whom it referred in its response was the same as the local union president who filed the complaint with the Commission. See Attachment 1 at 1. While SGS stated that the chief steward and the local union president were not the same person, it explained that both of these people were involved with its internal investigation and that the investigation concerned the same incident. See Attachment 1 at 2.

1 There appears to be no evidence that SGS, as a government contractor or a corporation,
2 made a prohibited contribution to the Feeney campaign. The complaint's generalized and
3 unsupported statements are rebutted by the responses' specific explanation that there was only
4 one reported incident of political activity, involving only one company employee, who was told
5 to stop and did so. Thus, based on our review of the evidence, this Office recommends that the
6 Commission find no reason to believe that Space Gateway Support, LLC violated the Act.

7 ***B. Yang Enterprises, Inc.***

8 Yang is a for profit Florida corporation that specializes in engineering and computer
9 services and is a subcontractor to SGS.⁶ See <http://www.yangenterprises.com>. Like SGS, Yang
10 also works out of Kennedy Space Center and Cape Canaveral Air Force Station, as well as other
11 government project sites throughout Florida and commercial project sites throughout the world.⁷
12 *Id.* In addition to providing its services to the federal government, Yang has also bid on and held
13 state government contracts in Florida for many years.⁸ See Sean Mussenden, *Feeney's Ethics*
14 *Case Goes Before State Today; Opponent Harry Jacobs says Speaker Used his Influence*
15 *Improperly. Feeney Denies it.*, Orlando Sentinel, Oct. 25, 2002, at B1 [hereinafter Sentinel, Oct.
16 25, 2002]. For instance, before 1997 Yang won a \$90,000 per year state contract with the Florida
17 Department of Children and Families and in 1999, it won a Department of Transportation
18 contract. Sentinel, Oct. 25, 2002, at B1.

⁶ For company information, see <http://www.sunbiz.org/> (providing corporate information listed with the Florida Dept. of State) and <http://www.ccr.gov/> (containing government contractor information).

⁷ The SGS newsletter, "The Gateway News," is "Published for Space Gateway Support/Affiliates" and lists Yang as an affiliate. See <http://www.spacegatewaysupport.com/docs/newsletter.pdf>.

⁸ According to the Central Government Registration web site (<http://www.ccr.gov>), Yang currently performs services for NASA under two separate contracts but does not specify whether they are as a prime contractor or as a subcontractor. See http://dsbs.sba.gov/dsbs/dsp_profile.cfm?User_Id=PN104161. A search of State of Florida public information also reveals that Yang currently holds a number of state contracts. <http://www.myflorida.com>.

1 In 2001, Tom Feeney became Yang's general counsel in his private law practice, and also
2 registered as a lobbyist in Orange County, Florida on behalf of Yang. See Yang Response at 2;
3 Jon Steinman, *Feeney's Second Job as Lobbyist Spurs Conflict-of-Interest Fears*, Orlando
4 Sentinel, Nov. 20, 2001 at A1; Kim Stone, *Truth in Journalism*, Informed Volusian, Oct. 30,
5 2002, available at <http://www.informedvolusian.com/>. At the same time, Feeney also served as
6 Speaker of Florida's House of Representatives, a part-time legislature, from 2000-2003. See
7 *About Tom Feeney*, available at <http://www.feeneyforcongress.com/bio.htm>; Sentinel, Oct. 25,
8 2002, at B1.

9 During the 2002 campaign cycle, controversy arose surrounding some of Yang's state
10 contracts and regarding its professional relationship with Tom Feeney.⁹ In the Fall of 2002, a
11 campaign advertisement by Harry Jacobs accused Feeney of misusing his position as Speaker by
12 obtaining a state contract for Yang and by interceding on behalf of Yang before state offices.
13 Yang Response at 2. The advertisement stated:

14 Maybe Tom Feeney shouldn't be in Congress. Tom Feeney is a lobbyist
15 and Speaker of the House. Maybe that's alright. And maybe it's only a
16 coincidence that Feeney's top client, Yang Enterprises, got an eight
17 million dollar state contract. Maybe. And when a whistle blower said that
18 Yang was cheating the state, maybe it's just fine that Feeney jumped and
19 the employee got fired. And now maybe it's okay that Tom Feeney has his
20 campaign headquarters right in the Yang building. Maybe Tom Feeney
21 shouldn't be in Congress.
22

23 Yang Response at 2. However, despite these allegations there was evidence that Yang was adept
24 at obtaining its own government contract awards before it retained Feeney. Sentinel, Oct. 25,

⁹ According to FEC disclosure reports, the President of Yang made contributions to the Feeney campaign, as did two Yang employees (an accountant and an engineer). Further, Yang hosted a private reception for Congressman Feeney in May 2003. *Yang Enterprises Party/Reception for U.S. Congressman Tom Feeney*, at <http://www.atayal.org/Event-5-03-03.asp> (last visited Feb. 17, 2004).

2002, at B1; *supra* at pp. 6-7. At the end of October 2002, the Florida Commission on Ethics announced the results of its investigation into the allegations against Feeney, finding no probable cause to believe Feeney violated state ethics laws. See Press Release, Oct. 30, 2002, at <http://www.ethics.state.fl.us> (last visited Feb. 17, 2004); Sean Mussenden, *Ethics Panel Exonerates Legislator as vote nears; House Speaker was accused of illegal lobbying*, South Florida Sun Sentinel, Oct. 26, 2002, at 10B.

The Jacobs television advertisement prompted Yang to send a memorandum to all of its employees in defense of the company and to urge them to call the television stations that broadcast the ad. Yang Response at 2. Yang executives were "outraged by the accusation" made against the company "and wanted to act quickly to correct the record." *Id.* The memorandum summarized the Jacobs advertisement and tried to clarify what Yang viewed as the misstatements in the ad. Attachment 3. The memorandum stated, in pertinent part:¹⁰

... that YEI is taking appropriate action to correct and then to eliminate the wrongful accusations being made against the YEI family by the Jacobs for Congress Campaign. Many of you have likely seen on your local television stations campaign ads where Mr. Jacobs accuses his opponent, Tom Feeney, of using undue political influence with Florida state government to obtain contracts for YEI and also to get state employees fired for reporting such undue influence. These accusations are bold face lies and are unconscionably calculated, for political reasons, to harm innocent families and business people – such as you and I. Negative political campaigns are bad enough in America today, but when they are calculated to harm innocent bystanders, it is too much. They indicate a gross and reckless disregard on the part of Mr. Jacobs and his political cronies of the truth about YEI and its longstanding and respected professional and personal competence in the business community. Mr. Feeney has never exercised political influence over any YEI contract and certainly has never sought to get a state employee fired in connection with any YEI contract.

Attachment 3. The memorandum closed with Yang's President urging company employees to contact a number of television stations to demand an apology and to demand that they cease

¹⁰ In the memorandum, Yang refers to the company as YEI.

1 running the ads. *See* Attachment 3. While Yang's President signed the memorandum, Feeney
2 was listed as Yang's General Counsel on the letterhead. *Id.*

3 Soon after the memorandum was circulated, this complaint was filed, alleging that Yang
4 held "mandatory meetings during work hours 'encouraging' the employees to picket the
5 campaign offices of Harry Jacobs" and that it circulated a memorandum to all of its employees
6 "in furtherance of Yang's political objectives." Complaint at 1. Aside from providing a copy of
7 the Yang memorandum with the complaint, the complainant did not make the allegations from
8 personal knowledge. Instead, he implied that he received reports from a number of union
9 members regarding the meetings and the memorandum, and summarized the information he
10 allegedly received without specifying when any of the "mandatory meetings" took place.

11 In its response, Yang maintained it distributed the memorandum in reaction to a negative
12 Jacobs campaign advertisement and in defense of the company. Yang Response at 2-3. Yang
13 also denied that it "ever held a meeting, mandatory or otherwise, for the purpose of discussing
14 the memorandum or the Jacobs advertisement," but argued that it would have been within its
15 First Amendment rights to do so. *Id.* at 3. In its reply to our request for clarification of its initial
16 response, Yang elaborated that it did not hold any meetings "for the purpose of discussing the
17 subject of picketing the campaign offices of Harry Jacobs" and stated that it was not aware of any
18 meetings taking place at which Yang representatives discussed such picketing.¹¹ Attachment 2 at
19 2-3. Yang also acknowledged that it had distributed the memorandum to its employees at the

¹¹ On November 14, 2003, this Office sent a follow up letter to counsel for Yang requesting clarification as to whether any meetings were held where the subject of picketing the Jacobs campaign office was discussed and requesting any details about those meetings. Attachment 2 at 1. Yang denied that any such meetings took place. *Id.* at 2-3.

1 Kennedy Space Center work site, but “recover[ed]” all of the copies at the request of its prime
2 contractor, SGS. *Id.* at 2.

3 As discussed below, there is no evidence in support of the allegations regarding the
4 meetings. Further, all of the details regarding the Yang memorandum tend to show that the
5 document was written in response to the negative Jacobs campaign advertisement, in order to
6 defend the company’s reputation.

7 Under the Act, Yang is subject to the prohibitions on corporate contributions and
8 expenditures, and limitations on corporate communications.¹² As a corporation, Yang cannot
9 make a contribution or expenditure in connection with any federal election. 2 U.S.C. § 441b(a).
10 Thus, Yang cannot make an express advocacy communication to the general public. 11 C.F.R.
11 §§ 114.3 –114.4. However, as a corporation, Yang can communicate on any subject with
12 members of its restricted class, i.e. with its stockholders, executive, and administrative personnel.
13 11 C.F.R. § 114.1(j). These communications may even include express advocacy of the election
14 or defeat of a federal candidate. 11 C.F.R. §§ 114.3(a)-(c); 11 C.F.R. § 100.22 (defining express
15 advocacy).

16 In this matter, there appears to be no factual basis for the complaint’s allegations
17 regarding the “mandatory meetings.” The complaint lacks specifics with regard to dates, times,
18 names and locations. Without those details, and in light of Yang’s denial that any such meetings
19 took place, there is no evidence that Yang held any meetings that would constitute election
20 related communications outside its restricted class.

¹² Contrary to the statements made in the complaint, as a subcontractor to SGS, Yang would not be subject to the government contractor provision of the Act. *See* Advisory Opinion 1980-26 (explaining that section 441c does not apply to subcontractors).

1 For different reasons, we do not believe there is any information regarding the
2 memorandum that would warrant an investigation. Although the memorandum is critical of a
3 candidate in a federal election and was distributed one month prior to the 2002 general election,
4 it does not contain an exhortation expressly advocating the election or defeat of a candidate.
5 11 C.F.R. § 100.22. Rather, it appears that Yang's memorandum was issued in reaction to
6 charges that were damaging to its professional reputation. Jacobs' advertisement against Feeney
7 can be read as implying that Yang benefited from improper or corrupt conduct and that it could
8 not have won the state contracts on the merits of its bids. According to Yang, company
9 executives in fact believed the accusations in the advertisement could affect the company's then
10 pending bid on a government contract.¹³ Yang Response at 2. They were also concerned Jacobs'
11 advertisement would negatively affect its employees. *Id.* at 2. It is logical that Feeney, as the
12 company's general counsel, would have been consulted after the Jacobs advertisement aired, but
13 Yang's connection to Feeney outside the context of the election should not prevent the company
14 from defending itself against what it deems to be false accusations. Thus, as the memorandum
15 appears to serve as a defense of the company, Yang's actions in drafting and distributing it are
16 understandable in light of the allegations the Jacobs advertisement made about Yang.

17 Given the unique circumstances surrounding the circulation of the Yang memorandum
18 and the lack of any detailed information regarding the alleged meetings, this Office recommends
19 that the Commission exercise its prosecutorial discretion and dismiss the allegations against
20 Yang Enterprises, Inc. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

21

¹³ Yang was awaiting the results of its bid on the University Affiliated Spaceport Technical Development contract at the time the Jacobs advertisement was aired. In the end, Yang was not awarded the contract. Yang Response at 2.

1 ***C. Political Activity of Sean O'Keefe***

2 The complaint alleges that O'Keefe "appear[ed] to be abusing his position and spending
3 government money for Mr. Feeney" and that by publicly endorsing Feeney, he was
4 "communicating his political position" to everyone working at NASA. Complaint at 2. A news
5 article describing O'Keefe's involvement in Feeney's, and other political campaigns,
6 accompanied the complaint. John Kelly and Kelly Young, *NASA head stumps for GOP*
7 *candidates*, Florida Today, Oct. 23, 2002, at 12A.

8 During the 2002 election cycle, O'Keefe received media attention when he publicly
9 endorsed several Republican candidates, including Feeney. However, there is no information to
10 indicate that O'Keefe abused his official position in doing so. In fact, a NASA spokesperson
11 informed reporters that NASA resources were not used for any of O'Keefe's political trips. *Id.*
12 Further, FEC disclosure reports do not reveal any individual contributions by O'Keefe to the
13 Committee, or any disbursements from the Committee to O'Keefe.

14 In 2002, O'Keefe was scheduled to make a public appearance on behalf of Feeney in the
15 only known Feeney/O'Keefe campaign event. Kelly, *supra* at 12A. The event was billed as a
16 "Space Town Hall Meeting" featuring "The Honorable Sean O'Keefe NASA Administrator and
17 The Honorable Tom Feeney Speaker of the Florida House." *Space Town Hall Meeting, at*
18 <http://www.spaceref.com/calendar/calendar.html?pid=1766> (last visited Feb. 17, 2004). The
19 announcement listed Feeney's campaign website address, giving the appearance that the event
20 was being sponsored by the Feeney campaign. *Id.* Ultimately, however, the event never took
21 place because of transportation problems. See Kelly Young, *Plane trouble cancels NASA town*
22 *meeting*, Florida Today, Oct. 29, 2002, at 3.

1 Based on the allegations and the publicly available information, it does not appear that
2 O'Keefe violated the Act. To the extent the complaint alleges O'Keefe campaigned on
3 government time, using government funds, it essentially alleges NASA made an in-kind
4 contribution to the Feeney campaign. However, only a "person" may make a contribution,
5 2 U.S.C. § 431(8)(A), and "person" is specifically defined in the Act to exclude "the Federal
6 Government or any authority of the Federal Government."¹⁴ 2 U.S.C. § 431(11). To the extent
7 the complaint alleges O'Keefe campaigned on behalf of Feeney on his own time, the value of
8 services provided without compensation by an individual who volunteers on behalf of a
9 candidate or political committee is specifically excluded from the definition of contribution. *See*
10 2 U.S.C. §§ 431(8)(B)(i), (iv). Nevertheless, even the sole Feeney/O'Keefe campaign event
11 referenced in the complaint never actually took place. Thus, this Office recommends that the
12 Commission find no reason to believe that Sean O'Keefe violated the Act.¹⁵

¹⁴ Sean O'Keefe was appointed to the position of NASA Administrator by the President in 2001, and still holds the position. *See* <http://www.nasa.gov/about/highlights/index.html> (last visited Feb. 17, 2004) (posting O'Keefe's biography); *see also*, 42 U.S.C. § 2472 (stating that NASA Administrator is an appointed position).

¹⁵ There is no indication that O'Keefe engaged in any activities that would merit reporting to the Office of Special Counsel, the agency with jurisdiction over the Hatch Act. 2 U.S.C. § 437d(a)(9); 5 U.S.C. § 1216. The Hatch Act places restrictions on the political activity of federal employees and restricts the use of official authority for "the purpose of interfering with or affecting the result of an election." 5 U.S.C. § 7323; 5 C.F.R. § 734.302. However, the Hatch Act permits presidential appointees to participate in a wide range of political activities. *See* 5 U.S.C. §§ 7321-7326; 5 C.F.R. §§ 734.501-504. This Office has no evidence that a Hatch Act violation took place.

D. The Committee and Treasurer

Absent additional information other than that contained in the complaint and the responses, there is no evidence that shows the Committee knowingly solicited contributions from SGS, a federal contractor, in violation of 2 U.S.C. § 441c(a)(2), or knowingly accepted or received prohibited corporate contributions from SGS in violation of 2 U.S.C. § 441b(a). The complaint's only assertions as they pertained to the Feeney campaign involved the allegations that there were Feeney campaign materials at SGS and that the Yang memorandum concerned an advertisement made by Feeney's general election opponent. Without more, we are unable to make an adequate determination whether a violation of the Act may have or may not have taken place. Further, in light of our recommendations with regard to Yang, this Office recommends that the Commission exercise its prosecutorial discretion and dismiss the allegations against Tom Feeney for Congress and Nancy H. Watkins, as treasurer. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

III. RECOMMENDATIONS

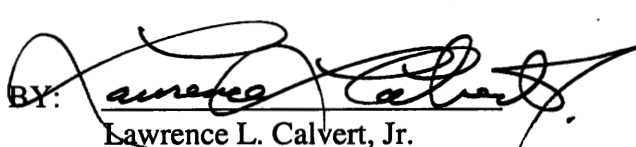
1. Find no reason to believe that Space Gateway Support, LLC, violated 2 U.S.C. §§ 441b or 441c, as it pertains to the allegations in this matter.
2. Dismiss the allegations against Yang Enterprises, Inc. as a matter of prosecutorial discretion.
3. Find no reason to believe that Sean O'Keefe violated the Act as it pertains to the allegations in this matter.
4. Dismiss the allegations against Tom Feeney for Congress and Nancy H. Watkins, as treasurer, as a matter of prosecutorial discretion.
5. Approve the appropriate letters and close the file.

Lawrence H. Norton
General Counsel

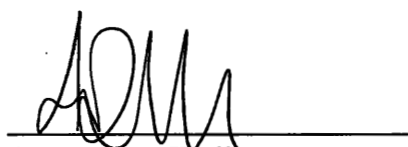
Rhonda J. Vosdingh
Associate General Counsel
for Enforcement

6/15/04
Date

BY:


Lawrence L. Calvert, Jr.
Deputy Associate General Counsel
for Enforcement


Jonathan Bernstein
Assistant General Counsel


Ana J. Peña-Wallace
Attorney

Attachments:

- 1 - Follow up Letter to SGS and SGS response
- 2 - Follow up Letter to Yang and Yang response
- 3 - Yang Memorandum