

# ARNOLD & PORTER

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October 23, 2003

**PRIVILEGED & CONFIDENTIAL**  
**ATTORNEY WORK PRODUCT**

**VIA HAND DELIVERY**

April J. Sands, Esq.  
Federal Election Commission  
999 E Street NW  
Washington, DC 20463

Re: **MUR 5357 – Response of Centex-Rooney Construction Co., Inc.**

Dear Ms. Sands:

This letter is in response to the letter dated September 25, 2003, informing Centex-Rooney Construction Company, Inc. ("Rooney") that the Federal Election Commission (the "Commission") has found reason to believe that Rooney violated the Federal Election Campaign Act of 1971, as amended, and offering to enter into pre-probable cause conciliation with Rooney.

Rooney accepts the Commission's offer to enter pre-probable cause conciliation and looks forward to bringing this matter to a timely resolution. As it has done to date, Rooney will continue to work with Commission attorneys and staff to provide whatever information is needed to close this matter.

In the time since Centex Corp. first reported the improper activities to the Commission, Rooney has taken several steps to ensure compliance and protect against future violations. The company has enhanced its policies and procedures regarding political activities. Senior employees have attended detailed training sessions in the law and the company's policies. All of the persons involved in the improper activities have repaid the amounts they were reimbursed to the company with interest. Finally, the company has taken appropriate disciplinary action with regard to all current and former employees who were involved.

We also wish to reiterate what we stated at our meeting on October 17. Rooney strongly believes that it would be unnecessary, unfair, inconsistent with Commission precedent, and contrary to the long-term interests of the Commission to impose penalties

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on Rooney employees who did no more than make contributions that were reimbursed by the company:

- It is unnecessary because these employees have already been disciplined by the company, and have repaid with interest the amounts they received as reimbursement for political contributions.
- It is unfair because the employees cooperated fully with the company's investigation, submitting to interviews and providing documents as requested. Indeed, their cooperation enabled the company to bring the facts of this matter to the Commission's attention in an expeditious and thorough manner.
- It is inconsistent with Commission precedent, since persons who are no more than conduits for illegal contributions have generally been subject to no more than letters of admonishment. *See Federal Election Comm'n, MUR 4884, In re Future Tech et al.*
- Most importantly, it would be contrary to the long-term interests of the Commission because it would deter companies from voluntarily reporting violations of the federal election laws. When the management of Centex Corp. learned that there may have been illegal contributions, it moved promptly to investigate the violations and report them to the Commission, even though there was little likelihood that the Commission would otherwise have discovered them. If Centex's cooperation with the Commission leads to the imposition of penalties on a large number of employees who were no more than conduits, who cooperated fully in Centex's investigation, who have paid back all reimbursed amounts with interest, and who were already subject to appropriate discipline by the company, morale will be severely affected. Other companies will surely think twice before voluntarily bringing violations to the Commission's attention. Moreover, employees might be less willing to cooperate in an internal investigation if they know that it may lead to the imposition of penalties against them.

We recognize that separate counsel represents these employees and that the staff will negotiate with respective counsel on behalf of these employees. Nonetheless, on their behalf and on behalf of Rooney we urge that the precedent of Future Tech be followed:

Various Future Tech employees . . . made contributions to federal campaign committees with the knowledge that their

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contributions would be reimbursed by Respondents, and they subsequently received reimbursements for the respective contributions. Accordingly, this Office recommends that the Commission find that there is reason to believe these individuals violated 2 U.S.C. § 441f. However, because there is no evidence of any additional complicity by these individuals in the violations at issue, this Office recommends to the Commission that it take no further action as to them and send the appropriate admonishment letter.

Federal Election Comm'n, *First General Counsel's Report Pre-MUR 358 In re Future Tech et al.*, at 15-16, Feb. 12, 1998.

Once again, we look forward to working with you to resolve this matter, and we appreciate the opportunity to move to pre-probable cause conciliation. As always, we are available to answer any additional questions you may have.

Sincerely,



Robert S. Litt

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