




FEDERAL ELECTION COMMISSION
Washington, DC 20463

Hans A. von Spakovsky

SENSITIVE

MEMORANDUM

TO: Commissioners
Acting Staff Director
General Counsel

FROM: Office of the Commission Secretary 

DATE: May 10, 2006

SUBJECT: Statement of Reasons of MUR 5641
Chairman Michael E. Toner,
Vice Chairman Robert D. Lenhard
Commissioners David M. Mason,
Hans A. von Spakovsky, Steven T. Walther,
and Ellen L. Weintraub

The attached document is being circulated for a 48-hour review prior to public release. Absent objection, the Office of General Counsel will include this statement in the public record file in this case.

cc: Thomasenia Duncan

Attachment



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
Robert Shrum)	MUR 5641
John Kerry for President, Inc.)	
David Thorne, in his official capacity as treasurer, and)	
Shrum Devine & Donilon, Inc.)	

**STATEMENT OF REASONS OF CHAIRMAN MICHAEL E. TONER, VICE
CHAIRMAN ROBERT D. LENHARD, AND COMMISSIONERS DAVID M. MASON,
HANS A. von SPAKOVSKY, STEVEN T. WALTHER AND ELLEN L. WEINTRAUB**

The matter arises from a contract between Complainant Gordon Motion Picture Company and Respondent John Kerry for President, Inc. The Commission voted unanimously to accept the recommendation of the Office of General Counsel (“OGC”) to dismiss the complaint against all respondents.¹ We write separately to clarify the Commission’s understanding of a sentence in the OGC report.

The complaint alleges that the Kerry campaign and Respondent David Thorne, in his official capacity as treasurer, breached a contract with Complainant. The complaint neither includes a copy of the contract nor alleges a specific violation of the Federal Election Campaign Act (“FECA”), 2 U.S.C. §§ 431 *et seq.* Respondents contend that the complaint is legally insufficient because Complainant’s allegations, even if true, are not FECA violations. Respondents also argue that part of the complaint is factually insufficient because it does not identify the source of information supporting Complainant’s statements, as 11 C.F.R. § 111.4(d) (1985) requires.²

OGC correctly concludes that the complaint provides insufficient basis to proceed, because nothing suggests a respondent violated FECA.³

¹ Voting affirmatively were Chairman Toner, Vice Chairman Lenhard, and Commissioners Mason, von Spakovsky, Walther, and Weintraub.

² First General Counsel’s Report at 2-3 (April 4, 2006).

³ *Id.* at 3.

However, the OGC report then states, “The complaint appears to be nothing more than a contract dispute between two private parties and, *therefore*, appears to be outside the scope of the Act.”⁴

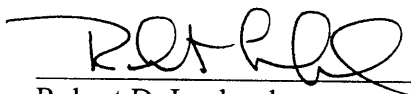
From this sentence, readers could erroneously conclude that contract disputes never implicate FECA. We write this statement to clarify that contract disputes *can* implicate FECA.

In the instant case, the Commission agreed with OGC that because of “the lack of detailed information regarding the contract and any breach thereof and the lack of an actual allegation in the complaint, there does not appear to be a basis for opening an investigation.”⁵ With this understanding, we voted unanimously to accept the OGC recommendation to dismiss the complaint.

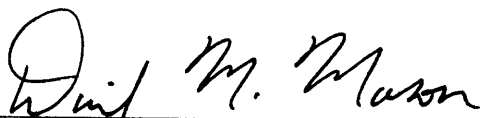
May 10, 2006



Michael E. Toner
Chairman



Robert D. Lenhard
Vice Chairman



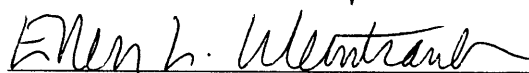
David M. Mason
Commissioner



Hans A. von Spakovsky
Commissioner



Steven T. Walther
Commissioner



Ellen L. Weintraub
Commissioner

⁴ *Id.* (emphasis added).

⁵ *Id.* at 3-4.