



# California Fair Political Practices Commission

May 5, 1988

P. Jerold Walsh  
Attorney at Law  
P.O. Box 2284  
Laguna Hills, CA 92653

Re: Your Request for Informal  
Assistance  
Our File No. I-88-139

Dear Mr. Walsh:

We have received your letter concerning the campaign reporting provisions of the Political Reform Act (the "Act").<sup>1/</sup> Your letter states only a general question. Therefore, we consider it to be a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed).<sup>2/</sup>

## QUESTION

When must campaign contributions made by an individual from personal funds and contributions made by a business entity in which the individual has an ownership interest be aggregated?

## CONCLUSION

The individual's contributions must be aggregated with contributions made by a business entity in which the individual has an ownership interest only if the individual directed or controlled the contributions of the business entity.

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, *et seq.* All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

<sup>2/</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

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### FACTS

Your question concerns the campaign reporting provisions of the Act. In particular, you have requested clarification of a statement in the 1988 Information Manual for Major Donor Committees and Independent Expenditure Committees. The statement, which appears on page 2 of the manual, is as follows:

The following combinations of individuals and entities will qualify as one committee if, together, their ... contributions total \$10,000 or more in a calendar year:

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An individual who makes contributions from personal funds and also directs contributions made by a business entity in which the individual has an ownership interest.

### ANALYSIS

The Act requires any person who makes contributions totaling \$10,000 or more in a calendar year to file campaign disclosure reports. (Sections 82013(c) and 84200.) This person qualifies as a "major donor" committee for purposes of the Act.

The term "person" is broadly defined in the Act, as follows:

"Person" means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, and any other organization or group of persons acting in concert.

### Section 82047.

Based on this definition of "person," the Commission has interpreted the campaign disclosure laws to require a group of persons acting in concert to cumulate their contributions for purposes of qualifying as a "major donor" committee under Section 82013(c). The Commission has addressed this issue in two of its opinions and also in a regulation. We next discuss the opinions and the regulation.

The first opinion, In re Lumsdon (1976) 2 FPPC Ops. 140 (copy enclosed), concerned an individual who was the majority shareholder in a closely held corporation. The Commission ruled that contributions by this individual and his corporation

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should be cumulated for qualification as a "major donor" unless it is clear from the surrounding circumstances that the individual and the corporation acted completely independently of one another in making contributions.

In Lumsdon, the Commission reached a different conclusion concerning cumulation of contributions by an individual who is president of a corporation or one of several trustees of a charitable foundation. The Commission ruled that the contributions would not be cumulated unless there is an agreement or mutual understanding, express or implied, that the individual and the corporation or foundation will contribute their funds toward the accomplishment of a common goal. The Commission based its different conclusion in this situation on the more limited degree of control over decisionmaking usually exercised by a corporate president or individual trustee, as compared to the majority shareholder of a corporation.

The second opinion addressing this issue is In re Kahn (1976) 2 FPPC Ops. 151 (copy enclosed). In that opinion, the Commission considered whether contributions by a parent corporation and its subsidiaries should be cumulated. The Commission reiterated its conclusion in Lumsdon, stating that contributions by the parent and subsidiaries would be cumulated unless it is clear from the surrounding circumstances that the parent and subsidiaries acted completely independently of each other.

In Kahn, the Commission found that there were specific facts indicating that contributions made by the parent and subsidiaries were made independently. Accordingly, the Commission's opinion was that the contributions in question should not be cumulated.

The Commission codified the Lumsdon and Kahn opinions in Regulation 18428 (copy enclosed). This regulation requires a "parent" and its "affiliated entities" to cumulate their contributions and file a unified campaign statement for purposes of "major donor" reporting. The regulation applies to an individual as well as to business entities. Contributions are cumulated only if the parent entity exercises direction or control over the affiliated entities regarding the making of campaign contributions. In the absence of such direction or control by the parent over actions of the affiliated entity, the campaign contributions are not cumulated.

The statement in the manual concerning cumulation of contributions made by an individual and a business entity in which the individual has a ownership interest was intended as a brief summary of Regulation 18428 and the Lumsdon and Kahn

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opinions. It was not intended as a modification of Commission policy. Thus, you have misunderstood the statement in the manual insofar as you interpret it to always require an individual to cumulate his or her contributions from personal funds with those of a business entity in which the individual has an ownership interest. As explained above, the contributions would be cumulated for reporting purposes only if the individual is in a position to direct or control the contributions made by the business entity and actually exercises such direction or control.

In your letter, you also state that, for purposes of "major donor" reporting, contributions of \$99 or less made by an individual from personal funds are not cumulated with contributions made by a business entity under the direction or control of that individual. Please note that we disagree with this statement.

Section 82013(c) provides that a person (or combination of persons) qualifies as a "major donor" committee when the total amount of contributions made is \$10,000 or more. This includes all contributions made by that person, regardless of amount. The \$100 threshold is relevant only for purposes of itemizing the contributions on campaign reports. Contributions from one person totaling \$100 or more are itemized. (Section 84211(f).) Contributions from one person totaling less than \$100 are not itemized, but instead are reported as a lump sum amount, combined with contributions from all persons who have contributed a total of \$99 or less. (Section 84211(d).) Thus, the "major donor" committee must report all contributions it makes, including contributions of \$99 or less.

The campaign manuals are reviewed and revised annually. We will take your comments on this portion of the current manual into consideration when we revise the manual for 1989.

If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel

*Kathryn E. Donovan*  
*by D.M.G.*

By: Kathryn E. Donovan  
Counsel, Legal Division

DMG:KED:plh  
Enclosure

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Refer to File No.

April 5, 1988

Fair Political Practices Commission  
Technical Assistance and Analysis Division  
428 J Street, Suite 700  
Sacramento, CA 95814

Attention: Mr. Kevin Braaten-Moen

Re: Request for Opinion re Revised Reporting Rules Set Forth in the 1988  
Campaign Disclosure Provisions Information Manual

Ref: Phone Conversation with Mr. Braaten-Moen of April 4, 1988  
Gentlemen:

Annually, as you know, the Fair Political Practices Commission issues a pamphlet entitled "Information Manual on Campaign Disclosure Provisions of the Political Reform Act For Major Donor Committees and Independent Expenditure Committees". In the 1988 revision there is a provision on Page 2 under the "Important Notes" section which appears to change the reporting rules in a way which conflicts with the statutes, the regulations promulgated under the statutes and prior practice. Because of the fact that the problem is a very subtle one, but with potentially serious penalties, I am unable to advise my clients as to its effect without soliciting an opinion from your office; therefore, prior to drafting this letter I obtained authority from my clients to proceed with the inquiry. Section 18428(b) of Title 2 of the California Administrative Code dealing with "Reporting By Committees and Affiliated Entities" defines an affiliated entity as:

"...a person or group of persons whose campaign contributions or expenditures are directed or controlled by another. A "parent" is the person who exercises direction or control over the affiliated entity in the making of campaign contributions or expenditures. An affiliated entity may include, but is not limited to, a subsidiary, branch, division, department, or local unit."

This section of the regulation goes on to require a unitary campaign statement for affiliated entities, filed in the name of the parent and containing certain specified information as follows:

"(c)(2) For the parent and every affiliated entity that has made expenditures, a listing of:

- (A) The name of the recipient and the amount of each expenditure of \$100 or more, made during the period covered by the campaign statement; ... ."

It is clear from this language that an affiliated entity may include a natural person or a business entity, but the key to whether or not such a person is an affiliated entity seems to be whether or not its contributions or expenditures are "directed or controlled by another".

This language would seem to permit a situation where a shareholder of a corporation (or, of course, a general partner of a partnership) might independently make contribution decisions regarding candidates and issues and satisfy those decisions using his own, nonbusiness funds and not be required to include that contribution in the unitary reporting so long as that individual's contributions are not part of the directed and controlled contributions made by the major donor committee. Under such a situation, I find no section of the statutes which requires that individual's contributions to be aggregated and reported with the business entity, nor do I read Section 18428 of the regulations to require that since to do so would seem to infringe on the individual's freedom to act independently of the business entity. Taking this argument one step further, I believe that in the instance where that individual's contribution from his own checkbook might be less than \$100 it need not be included in the major donor committee's report, but is a reportable contribution only to the extent that it must be shown on a candidate's filing as included in the aggregate amount of contributions received less than \$100. It is my belief that all the information manuals issued by you prior to the 1988 issue were consistent with the interpretation that I have just set forth--including the 1987 issue which added language, which in hindsight began to move in the direction which I consider objectionable, by stating that "...you must aggregate contributions or expenditures made out of personal funds with any contributions or expenditures made out of your business account and any other account(s) under your control. ...contributions or expenditures made by a parent corporation and its subsidiaries are aggregated unless the parent and subsidiaries act completely independently of each other." Even though this language took what now appears to be the first step in requiring the aggregation of personal contribution decisions with the decisions made by a business entity, it was included in a section which made it clear that a parent and subsidiary company acting completely independently of each other need not aggregate their contributions; consequently, it was a fair reading of this paragraph that personal expenditures made entirely independent of the business entity contributions arguably would come within the "completely independently of each other" language contained in that paragraph and, similarly, the aggregation requirement earlier in that paragraph seemed to be only with respect to accounts specifically under the control of the contributor. The 1988 handbook has taken this requirement two giant steps forward in the manner which will be set forth below. In the 1988 manual, in the section referenced above, you have included the language:

"The following combinations of individuals and entities will qualify as one committee if, together, their independent expenditures total \$1,000 or more in a calendar year, or their contributions total \$10,000 or more in a calendar year:

- o Spouses making independent expenditures or contributions from community funds.
- o An individual who makes contributions from personal funds and also directs contributions made by a business entity in which the individual has an ownership interest... ."  
(Emphasis supplied.)

It is this latter section which, in my opinion, is not in compliance with either the law, the regulations or the substance of the earlier manuals. This latter section eliminates the ability of an individual to make his own contribution decisions, which may or may not be compatible with the decisions being made by the business entity in which he may have an ownership interest. From a practical standpoint, the language which states "... and also directs contributions" must be interpreted extremely conservatively by the contributor in order to avoid an allegation of impropriety, and this can have not only a chilling effect on that individual's decision regarding support of the candidate or issue but impermissibly puts him or her in a illegally discriminated situation from other individuals who do not have to report their contributions. In other words, it is impossible for me to advise any client who has any ownership interest in a business entity coupled with any activity at all in the political decisionmaking process to take the position that he or she does not "direct contributions", because of this newly added language. It seems to me that is completely incompatible with the statutes and regulations read as a whole. This subsection of the manual is a distinct change from prior years, in my opinion, and is inconsistent with law in that it prevents any individual business person from making even under-\$100 contributions unless those contributions are reported on the business entity filing. This is an unfair and unwarranted result: the individual should be able to make contribution decisions for his or her personal account which are completely at odds to the contributions made by the business entity. Under the policy of your information manual the public report would indicate for public scrutiny a contribution record for the aggregated "committee" which might be completely disparate to the record which the business entity intended, give a misleading view as to the contribution policies followed by that business entity, and dissuade the individual from making contributions which he or she might otherwise make if those contributions were at variance with the company's "party line".

It seems to me there is no public purpose to be served by requiring aggregation of reporting for those individual owners who are independently making contribution decisions and using their own funds. It further seems to me that the anonymity limits set out by law, e.g., the under-\$100 limits which must be respected if a person intends to avoid being listed as a named contributor, were limits which have been well thought out by both the legislators and the regulators, have governed us for a good number of years, and should not be arbitrarily overruled by the information manual

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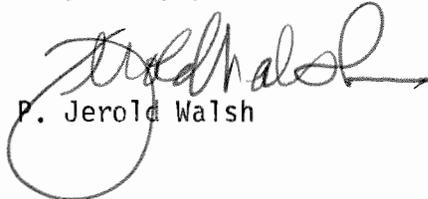
language since that is not subject to the same public interest safeguards and review procedures as even the adoption of a regulation.

For the reasons set forth above, I solicit your opinion to the effect that the section on page 2 of the manual which reads:

"An individual who makes contributions from personal funds and also directs contributions made by a business entity in which the individual has an ownership interest."

should be interpreted to mean that the only such aggregate reporting which may be required is in those instances where, in contrast to the situation where bona fide individual and independent contribution decisions are made, there is a common business decision by the ownership of the business entity that the individual owners will personally make contributions, and if no such concert of action is involved contributions made from strictly personal decisions need not be aggregated as part of the committee action.

Very truly yours,



P. Jerold Walsh

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## ATTACHMENT

### Hypothetical Situation No. 1 (Direct Ownership)

Assume that Mr. Jones is a 15% general partner in a partnership styled Acme Management Co. As a 15% partner, he is a member of the Management Committee of the partnership but has no independent authority to make business commitments for the partnership except in breach of the partnership agreement. Within this prohibition he has no authority to make decisions for the partnership regarding political contributions but does take part in the discussions among the Management Committee as to what political contributions should be made. Acme is a major donor committee for purposes of campaign reporting laws. Assume that Mr. Jones independently decides to make four political contributions: one contribution is in the amount of \$100 and is made to a candidate who is also the recipient of a \$5,000 donation from Acme. Political contribution No. 2 is a contribution in the amount of \$99, which is made to candidate No. 3 who was the recipient of a \$3,000 contribution from Acme. Political contribution No. 3 is in the amount of \$500 to a candidate who was not the recipient of any contribution from Acme and political contribution No. 4 was in the amount of \$99 which was to candidate No. 4 who similarly is not the recipient of any contribution from Acme.

### Hypothetical Situation No. 2 (Indirect Ownership)

Mr. Smith is the 100% shareholder of Baker Corporation, which corporation in turn is a 10% partner in Charlie Development Co., a general partnership. Charlie Development Co. is a major donor committee for purposes of the campaign contribution reporting laws. The individual, Smith, is a member of the Management Committee for Charlie Development Co., but in his individual capacity obviously has no ownership interest. Assume that Mr. Smith independently decides to make four political contributions: one contribution is in the amount of \$100 and is made to a candidate who is also the recipient of a \$5,000 from Charlie Development Co. Political contribution No. 2 is a contribution in the amount of \$99, which is made to candidate No. 3 who was the recipient of a \$3,000 contribution from Charlie Development Co. Political contribution No. 3 is in the amount of \$500 to a candidate who was not the recipient of any contribution from Charlie Development Co. and political contribution No. 4 was in the amount of \$99 which was to candidate No. 4 who similarly is not the recipient of any contribution from Charlie Development Co.

In the above two hypothetical situations are raised the questions of primary importance to my clients. They can be summarized as follows: In the event that a partner or corporate shareholder of a business entity has some minor involvement in decisionmaking with respect to political contributions, yet totally independently makes contribution decisions for his own decision accounts, no aggregation of reporting should be required, and arguably is not required by law. Under the guidelines of the 1988 information manual all of the contributions seem to be required to be reported--even those under \$100. These two hypotheticals illustrate that the information manual impermissibly requires reporting beyond that contemplated by statute or regulation.