



California Fair Political Practices Commission

March 29, 1989

William A. Jackson
General Counsel
Cooperative of American Physicians, Inc.
3550 Wilshire Boulevard, Suite 1800
Los Angeles, CA 90010-2419

Re: Your Request for Informal Assistance
Our File No. I-89-129

Dear Mr. Jackson:

You have requested advice on behalf of the Cooperative of American Physicians, Inc. and related entities regarding their responsibilities under the Political Reform Act ("the Act").¹ Since the questions that you present are hypothetical in nature and the facts presented are insufficient for us to render specific assistance, we consider your letter to be a request for informal assistance under subdivisions (c)(4)(D) and (c)(4)(F) of Regulation 18329 (copy enclosed).²

QUESTIONS

1. Must the Cooperative of American Physicians, Inc. ("the corporation"), the Mutual Protection Trust ("the trust") and the CAP/Trust Legislative Committee ("the corporate committee") aggregate their campaign contributions for purposes of the contribution limits of Proposition 73?

¹ 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.

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

2. Must the corporation and political committees sponsored by the corporation to represent distinct constituencies among the corporation's members ("constituent committees") aggregate their campaign contributions for the purposes of the contribution limits of Proposition 73?

CONCLUSIONS

1. The corporation, trust and corporate committee, or any combination thereof, must aggregate their campaign contributions for the purposes of the contribution limits of Proposition 73 when one of them exercises control over another's making of campaign contributions. Based on the facts provided, it appears that neither the trust nor the corporation exercise control over the other's making of campaign contributions. Therefore, their campaign contributions need not be aggregated for the purposes of the Proposition 73 contribution limits. However, your letter contains insufficient facts from which to determine whether the corporation's or trust's campaign contributions need to be aggregated with contributions of the corporate committee.

2. The corporation and each constituent committee, or any combination thereof, must aggregate their campaign contributions for the purposes of the contribution limits of Proposition 73 when one of them exercises control over another's making of contributions. However, your letter contains insufficient facts from which such a determination can be made.

FACTS

The corporation is a California cooperative corporation organized for the specific purpose of establishing an interindemnity arrangement under Insurance Code Section 1280.7. The corporation has over 3,000 members, all of whom are licensed physicians. It is governed by a board of directors that is elected by the members.

The trust is the interindemnity arrangement established by the corporation. It is an unincorporated trust created by an interindemnity contract between member physicians who agree to share the cost of defense and payment of medical malpractice claims. Membership in the trust is available only to members of the corporation and substantially all of the corporation's members are also members of the trust. However, the trust is governed by a board of trustees that, by law, is elected by the membership of the trust (Insurance Code Section 1280.7(a)(2)). The trust and the corporation also file separate tax returns.

The corporate committee is a political committee sponsored by the corporation. It qualifies as a "broad based political committee" as defined under the Act (see footnote 3, infra). The corporation solicits voluntary contributions for the corporate committee from the corporation's member physicians.

The corporation is contemplating the sponsorship of several distinct political committees to represent the interests of the various physician constituencies within the corporation's membership. Examples of these constituent committees include an obstetricians' committee, an anesthesiologists' committee and a family practitioners' committee. Each committee would consist of an entirely distinct group of corporate members who make individual contributions to the committee.

ANALYSIS

Proposition 73 added, among other things, Sections 85301, 85302, 85303 and 85305 to the Act. These sections impose specific limits on contributions that a "person," "political committee" and "broad based political committee"³ can make to individual candidates or to other committees during a fiscal year.

Obviously, if these persons or entities are permitted to form an unlimited number of committees, each of which can make the maximum amount in contributions allowed under Proposition 73, the limitations of the statute would be meaningless.

A basic rule of statutory interpretation states that every provision of a statute is presumed to have a meaning and perform a useful function. (Moyer v. Workmen's Compensation Appeals Board (1973) 10 Cal. 3d 222, 230.) Furthermore, Section 81003 requires that provisions of the Act be liberally construed to accomplish its purposes. Thus, the Commission, pursuant to its duty to administer and implement the Act (Section 83111), must construe and enforce Proposition 73's contribution limits in a manner that gives them meaning and is consistent with their purpose.

One of the purposes of Proposition 73's contribution limits was to "place a reasonable contribution limit on how much one donor can give to a candidate." (Emphasis added.) (See Argument in Favor of Proposition 73, California Ballot Pamphlet, June 7,

³ Section 85102 defines these terms:

"Person" is defined as "an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, and labor organization." (Section 85102(b).)

"Political committee" is defined as "a committee of persons who receive contributions from two or more persons and acting in concert makes contributions to candidates." (Section 85102(c).)

"Broad based political committee" is defined as "a committee of persons which has been in existence for more than six months, receives contributions from one hundred or more persons, and acting in concert makes contributions to five or more candidates." (Section 85102(d).)

1988 Primary Election, p. 34.) The Act also enunciates the general purpose of accomplishing the full and truthful disclosure of expenditures and receipts in election campaigns "in order that the voters may be fully informed and improper practices may be inhibited." (Section 81002(a).)

Therefore, to give meaning to Proposition 73's contribution limits and fulfill the purposes of the Act, these provisions must be construed so that persons and entities are not permitted to exceed the contribution limits for one contributor during each fiscal year. The Commission has not yet considered a specific question of the type posed herein. Nevertheless, a review of Commission opinions on an analogous question may be helpful.

In In re Lumsdon (1976) 2 FPPC Ops. 140 (copy enclosed), the Commission considered whether a majority shareholder and his closely held corporation, both of whom made separate contributions to candidates, were required, by virtue of their relationship, to aggregate their contributions for reporting purposes under the Act. The Lumsdon opinion concluded that a majority shareholder exercises almost complete control over the activities of a closely held corporation. On that basis, the Commission held that there existed an assumption, rebuttable by specific facts showing otherwise, of an implicit agreement between the shareholder and the corporation to accomplish a common political goal by making the contributions. Therefore, the shareholder and corporation were considered to be one entity and had to aggregate their contributions for reporting purposes under the Act.

The Commission applied the same test in the opinion of In re Kahn (1976) 2 FPPC Ops. 151 (copy enclosed), a case concerning reporting requirements when a parent corporation and its subsidiaries made contributions to candidates. There, due to the ultimate responsibility of a parent corporation for its subsidiaries and the power of the parent to remove the subsidiaries' officers, the Commission reached the same conclusion that was reached in the Lumsdon opinion. Therefore, a parent corporation and its subsidiaries are also considered to be one entity required to aggregate their contributions for reporting purposes under the Act, unless it is clear from the surrounding circumstances that the corporations make contributions completely independently of each other.

The Lumsdon and Kahn opinions concerned the aggregation of contributions made by related entities for reporting purposes. A similar analysis can apply here, where the question concerns the aggregation of contributions made by related entities for determining whether Proposition 73's contribution limits are met. In both cases, the focus of the analysis is upon whether one of the related entities exercises control over the others in their making of the campaign contributions. Because the determination of "control" involves many variables, the Commission must proceed on a case-by-case basis.

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Applying the Lumsdon/Kahn "control" test to the entities specified in your letter, it appears that the trust is subject to little, if any, control by the corporation. The trust has its own board of trustees elected by the physician members who participate in the trust. Also, the trust's board is apparently bound to act according to normal fiduciary duties and not according to the directions of the corporation's board. Based on these facts, it appears that contributions made by the trust need not be aggregated with contributions made by the corporation and vice versa. Of course, should additional facts be presented, this advice is subject to change.

However, you have provided insufficient facts concerning the degree of control the trust exerts over the corporate committee for us to determine whether contributions of those two entities must be aggregated. While your letter suggests that the trust does not control the corporate committee's activities, the name of the corporate committee, "CAP/Trust Legislative Committee," suggests that the trust may have a degree of control in the committee's campaign contribution activity.

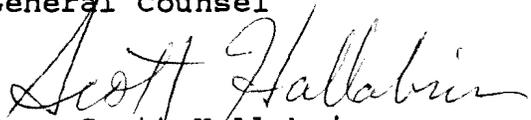
Likewise, there is insufficient information provided in your letter to determine whether contributions of the corporation and the constituent committees must be aggregated. While your letter states that the corporation "sponsors" these committees, it does not detail whether and the degree to which the sponsorship entails corporate control over activities of the constituent committees.

Hopefully, the general guidelines set forth in this letter will enable you to make your own determination as to whether the contributions of these entities must be aggregated. However, if not, you may write to us with additional facts and we will attempt to make that determination.

If you have additional questions, you may contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: Scott Hallabrin
Counsel, Legal Division

DMG:SH:ld

Enclosure



**Cooperative
of American
Physicians, Inc.**

**MUTUAL
PROTECTION
TRUST**

HOME OFFICE
3550 Wilshire Boulevard
Suite 1800
Los Angeles, California
90040-2419
(213) 251-0600
(800) 252-7706

NORTHERN CALIFORNIA OFFICE
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Suite 620
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February 22, 1989

California Fair Political Practices Commission
428 J Street, Suite 800
P.O. Box 807
Sacramento, California 95804-0807

Gentlemen:

I am writing to request formal advice on certain questions relating to compliance with Proposition 73 campaign contribution limits. The questions presented in this letter have a common theme: whether the contributions of related organizations would be aggregated for the purpose of compliance with contribution limits.

Background

The Cooperative of American Physicians, Inc. ("CAP") is a California cooperative corporation, organized for the specific purpose of establishing an interindemnity arrangement under Section 1280.7 of the California Insurance Code. CAP has over 3,000 members, all of whom are California licensed physicians. Its governing body is a Board of Directors elected by the members.

The Mutual Protection Trust ("MPT") is the interindemnity arrangement established by CAP. It is an unincorporated trust created by an interindemnity contract between member physicians who agree to share the cost of defense and payment of medical malpractice claims. Members make an initial contribution to the trust corpus. To the extent that income from the trust corpus is insufficient to pay the shared costs, members are personally liable without limit for assessments. Membership in MPT is available only to members of CAP and substantially all CAP members are also MPT members; however, MPT is separately governed by a Board of Trustees elected by the membership. This form of organization is prescribed by Section 1280.7 of the Insurance Code. CAP and MPT file separate tax returns.

The CAP/Trust Legislative Committee ("TLC") is a political committee sponsored by CAP which has previously filed a Statement of Organization (Form 410) and has been assigned Identification No. 760951. TLC qualifies as a broad based political committee under Proposition 73 and recently filed an amended Form 410 to that effect. CAP solicits voluntary contributions for TLC from CAP member physicians.

Question Number 1

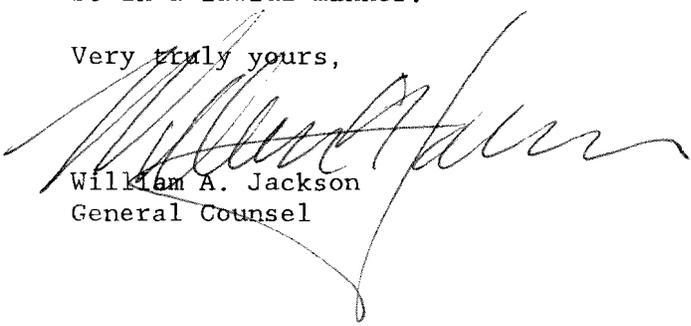
Are there any provisions of Proposition 73 or other applicable law that would cause CAP, MPT and TLC not to be treated as separate entities for the purpose of contribution limits? Would any of these entities be regarded as having exceeded the contribution limits applicable to it because of contributions made by one or both of the others?

Question Number 2

Assume that CAP sponsored a number of political committees for distinct constituencies within CAP's overall membership, e.g., a CAP Anesthesiologists' Political Committee, a CAP Obstetricians' Political Committee, a CAP Family Practitioners' Political Committee, etc. Although all committees would have a common sponsor, each would have an entirely distinct group of CAP members making individual contributions. Are there any provisions of Proposition 73 or other applicable law that would prevent a candidate from receiving separate \$5,000 contributions from more than one of these committees during a single fiscal year?

We are requesting your advice because of the lack of clear guidance on aggregation of payments in Proposition 73, since it appears to be the Commission's position that Section 85312 of Proposition 68 has not survived. Your assistance will be very much appreciated. Although we want to be as helpful as possible to those candidates whom our members wish to support, we do need to make sure that we do so in a lawful manner.

Very truly yours,


William A. Jackson
General Counsel



California Fair Political Practices Commission

March 2, 1989

William A. Jackson
General Counsel
Cooperative of American
Physicians, Inc.
3550 Wilshire Blvd., Suite 1800
Los Angeles, CA 90010-2419

Re: Letter No. 89-129

Dear Mr. Jackson:

Your letter requesting advice under the Political Reform Act was received on February 24, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Scott Hallabrin an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329.)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths
General Counsel

DMG:plh