California
Fair Political
Practices Commission

April 13, 1989

David R. Anderson
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Re: Your Request for Informal Assistance
Our File No. I-89-151

Dear Mr. Anderson:

This is in response to your request for information relative to the newly enacted provisions of the Political Reform Act (the "Act")[1] limiting campaign contributions. Your request is general in nature and does not reveal the identity of the person on whose behalf you are seeking advice. Therefore, we are treating your question as a request for informal assistance pursuant to Regulations 18329(c) (copy enclosed).[2]

QUESTION

Proposition 73 imposes a limit of $1,000 per fiscal year on contributions from a corporation to a candidate. Do subsidiaries of a holding company constitute separate corporations for purposes of the contribution limit?

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[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. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

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CONCLUSION

The contributions of a holding company and its subsidiaries will be aggregated in determining whether the contribution limits of Proposition 73 have been met if one of the related entities exercises control over the other in making campaign contributions.

ANALYSIS

The passage of Proposition 73 resulted in the enactment of a series of statutory provisions regulating campaign contribution limits. (Sections 85300 - 85307.) These sections limit the amount of contributions which can be made by persons, committees, broad based committees, and political parties. When dealing with related entities, the issue arises as to whether these related entities should be treated as separate entities for purposes of the contribution limits or whether their contributions should be aggregated.

Prior to the enactment of Proposition 73, the Commission had occasion to deal with the question of affiliated entities in the context of campaign reporting requirements. One case dealt with a majority shareholder of a closely held corporation where both the shareholder and the corporation made contributions to candidates. (In re Lumsdon (1976) 2 FPPC Ops. 140, copy enclosed.) The second case concerned contributions made by a parent corporation and its subsidiaries. (In re Kahn (1976) 2 FPPC Ops. 151, copy enclosed.) In both cases, the issue of aggregation of contributions turned on whether or not one entity exercised control over the other in making campaign contributions. If each entity was acting independently in making its contributions, no aggregation would occur.

Recently, we applied the Lumsdon/Kahn "control" test to determine whether aggregation of contributions was appropriate with respect to the campaign contribution limits imposed by Proposition 73. (Jackson Advice Letter, No. I-89-129, copy enclosed.) Whether or not the contributions of the affiliated entities are controlled by one entity or are made independently will be determined on a case-by-case basis, because the determination of "control" involves a great many variables. (Jackson, supra, at p. 4.) The same test would be applied in considering whether the contributions of a holding company and its subsidiaries would be aggregated.

The Commission is in the process of considering a regulation dealing with aggregation of contributions between affiliated entities. That regulation is currently set for hearing on June 6, 1989. A copy of the proposed regulation and accompanying memorandum is enclosed for your reference. The Commission would welcome any comments that you might have.

If you have any questions concerning this letter, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel

By: Margaret W. Ellison
Counsel, Legal Division

DMG:MWE:aa

Enclosures

WILEY, REIN & FIELDING

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March 6, 1989

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VIA FEDERAL EXPRESS

Ms. Margaret Ellison
Fair Political Practice Commission
Legal Division
428 J Street, Suite 800
P. O. Box 807
Sacramento, CA 95804-0807

Re: Question: Under Proposition 73's $1,000/year per corporation contribution limit, do subsidiaries of a holding company constitute separate corporations in terms of the contribution limit?

Dear Ms. Ellison:

It was a pleasure to talk with you last Friday. To confirm our discussion, it was my understanding that you are of the initial opinion that the campaign contributions of a holding company and its affiliated subsidiary would be aggregated under Proposition 73. Furthermore, your opinion was based, in part, on two Fair Political Practice Commission cases decided prior to Proposition 73.

I look forward to receiving copies of the cases you mentioned. After reviewing such cases I will contact you again if we are planning to pursue an advice letter from your office. In the meantime, however, I am particularly interested in learning if your subsequent research confirms your initial opinion.

If I can clarify this question for you, please do not hesitate to call.

Very truly yours,

David R. Anderson

/hla

California Fair Political Practices Commission

March 9, 1989

David R. Anderson
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Re: Letter No. 89-151

Dear Mr. Anderson:

We received your letter requesting confirmation of advice under the Political Reform Act on March 7, 1989. Your letter has been assigned to Margaret Ellison or response. If you have any questions, you may contact her directly at (916) 322-5901.

If the letter is appropriate for confirmation without further analysis, we will attempt to expedite our response. A confirming response will be released after it has gone through our approval process. If the letter is not appropriate for this treatment, the staff person assigned to prepare the response will contact you shortly to advise you. In such cases, the normal analysis, review and approval process will be followed.

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

Sincerely,

Diane M. Griffiths
General Counsel

DMG:plh:confadv1

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