



California Fair Political Practices Commission

December 26, 1989

Phillip Recht
Manatt, Phelps, Rothenberg and Phillips
11355 West Olympic Boulevard
Los Angeles, CA 90064

Re: Your Request for Informal Assistance
Our File No. I-89-571

Dear Mr. Recht:

This is in response to your letter requesting advice with respect to the campaign reporting provisions of the Political Reform Act (the "Act").^{1/} The Act requires the Commission to provide formal written advice only to persons whose duties under the Act are in question or their authorized representative. The Commission will not provide formal written advice to a representative of a person whose duties are in question unless the name of the person whose duties are in question is provided. (Section 83114(b); Regulation 18329(b)(2)(A), copy enclosed.) Consequently, we can only provide the following informal guidelines with respect to your questions.^{2/}

QUESTIONS

1. The contributions of a partnership are controlled by a steering committee of five of the 50 partners. Some of the five controlling partners are corporations, wholly owned and controlled by single shareholders. You have asked if the contributions of the partnership must be cumulated with the contributions of the controlling partners, the individual shareholders of the controlling partners, or both, to determine whether the partnership, the partners or the individual owners of the partners have reached the contribution limits of the Act.

^{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. A general partnership consists of two corporate partners. The contributions of the partnership are controlled and directed by two individuals. One of the controlling individuals is the president of one of the two corporate partners. The other controlling individual is the chairman and chief executive officer of the same corporation. You have asked if the contributions of the partnership must be cumulated with the contributions of the individuals that direct and control the partnership's contributions to determine whether the partnership, the individuals, or both, have reached the contribution limits of the Act.

3. A shareholder owns 51 percent of a corporation and directs and controls the contributions of the corporation. You have asked if the individual's contributions must be cumulated with the contributions of the corporation to determine whether the corporation and the individual have reached the contribution limits of the Act.

CONCLUSIONS

1. The partnership in your first question is controlled by a steering committee of five. Thus, no single member of the steering committee in fact directs and controls the contributions of the partnership. Consequently, cumulation of contributions made by the partnership, on one hand, and the individual members of the steering committee on the other is not required.

2. Where the controlling majority of persons directs and controls both the partnership's contributions and the contributions of a corporation, cumulation of the corporate and partnership contributions is required. However, the contributions of the partnership will not be cumulated with the individuals that control the partnership unless one of the individuals in fact directs and controls the contributions of the partnership or the corporation.

3. Where a shareholder owns 51 percent of a corporation and directs and controls the contributions of the corporation, cumulation of the corporate and individual contributions is required.

DISCUSSION

The Act, as amended by Proposition 73, provides that contributions from persons to candidates for elective office and to political committees must comply with the fiscal year contribution limits^{3/} as set forth in Sections 85301, 85302 and

^{3/} The fiscal year is July 1 through June 30. (Section 85102(a).)

85303.^{4/} The Act also sets forth contribution limits for special elections and special runoff elections. (Section 85305.) The purpose of Proposition 73's contribution limits was to place a reasonable ceiling on how much one donor can give to a candidate. (Argument in Favor of Proposition 73, California Ballot Pamphlet, June 7, 1988 Primary Election, p. 34, copy enclosed.)

Under some circumstances the Act requires that contributions made by more than one person be cumulated and the persons be treated as a single contributor to determine if the persons have reached the contribution limits of the Act.^{5/} Cumulation is required under two lines of authority. First, in 1976, the Commission set out standards for the cumulation of contributions in two opinions, In re Kahn (1976) 2 FPPC Ops. 150 and In re Lumsdon (1976) 2 FPPC Ops. 140 (copies enclosed). In the Kahn Opinion the Commission concluded that cumulation of contributions was required where contributions were made by a parent company and its wholly owned subsidiary. In the Lumsdon Opinion, the Commission found cumulation of contributions was required where contributions were made by a corporation and the corporation's majority shareholder. Both the opinions focused on the ability of one person to control the contributions of another.

At the Commission's June 1989 meeting, Regulation 18531.5 (copy enclosed) was adopted to further clarify when cumulation is appropriate.^{6/} Specifically, where the question concerns two contributors which are both entities, Regulation 18531.5 requires cumulation under the following circumstances:

^{4/} Contributions from a person to a candidate are limited to \$1,000 in any fiscal year. (Section 85301(a).) Contributions to a political committee or broad based political committee are limited to \$2,500 per fiscal year per contributor. (Section 85302.) Contributions from a political committee to a candidate are limited to \$2,500 each fiscal year, and contributions from a broad based political committee or political party to a candidate are limited to \$5,000 per fiscal year. (Section 85303.)

^{5/} You have also asked about cumulation with respect to the qualification of major donor committees. The qualification of major donor committees is governed by the same cumulation rules as discussed herein. A major donor is defined as any person who makes contributions totaling \$10,000 or more in a calendar year to or at the behest of candidates or committees. (Section 82013.)

^{6/} Regulation 18531.5 has been submitted to the Office of Administrative Law for review. Although not currently effective, the regulation expresses the Commission's policy concerning cumulation of contributions. We anticipate that the regulation will become effective as law in early February 1990.

(a) If the same person or a majority of the same persons in fact directs and controls the decisions of two or more entities to make contributions or expenditures to support or oppose a candidate or candidates for elective office, those affiliated entities shall be considered one person, one political committee, or one broad based political committee for purposes of the contribution limitations in Government Code Sections 85301, 85302, 85303 and 85305.

(b) Business entities in a parent-subsidary relationship and business entities with the same controlling (more than 50-percent) owner shall be considered one person for purposes of the contribution limitations in Government Code Sections 85301, 85302, 85303 and 85305, unless the business entities act completely independently in their decisions to make contributions and expenditures to support or oppose candidates for elective office. For purposes of this section, a parent-subsidary relationship exists when one business entity owns more than 50 percent of another business entity.

Thus, the regulation requires cumulation of contributions made by two different entities where: (1) the same person or a majority of the same persons, (2) in fact directs and controls, (3) the decisions of two or more entities, (4) to make contributions or expenditures to support or oppose a candidate or candidates for elective office. If there is no direction and control in fact by the same person or majority of persons as to either entity, cumulation is not required.

In your first question, the partnership is controlled by a steering committee of five. Based on the facts you have provided, no single member of the steering committee directs and controls the contributions of the partnership. Similarly, without specific facts to the contrary, we presume that the steering committee members do not direct and control the contributions made by the other members of the steering committee, including those members who are the sole shareholders of the controlling corporate partners. Consequently, cumulation of contributions made by the partnership and the members of the steering committee is not required in this situation. (Regulation 18531.5(a); In re Lumsdon, supra.)^{7/}

Your second question is analyzed in substantially the same manner. Clearly, the controlling majority of persons directs and

^{7/} This result would be different if the majority of the steering committee also controlled contribution decisions of another business entity. Under such circumstances cumulation between the two business entities would be appropriate.

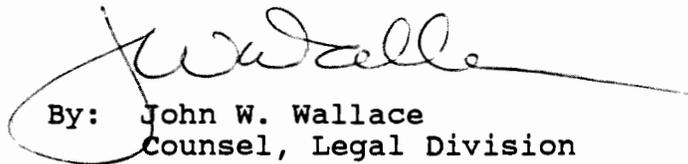
controls both the partnership's contributions and the contributions of one of the corporate partners, requiring cumulation of contributions made by the partnership and that corporation.^{8/} The same cannot be said about contributions made by either of the individuals that controls the partnership. According to your facts, the president does not in control the contributions of the partnership or the corporation because the chairman equally controls the contributions of the business entities.^{9/} Thus, cumulation is not required. (Regulation 18531.5(a); In re Lumsdon, supra.) The same analysis also applies to the chairman's individual contributions.

Your last question appears to fall precisely in the facts of the Lumsdon Opinion. Thus, where a shareholder has a controlling ownership interest in a business entity and controls the contributions of the business entity, cumulation of the contributions of the business entity and the majority shareholder is required.

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

Sincerely,

Kathryn E. Donovan
General Counsel


By: John W. Wallace
Counsel, Legal Division

KED:JWW:plh

Enclosures

^{8/} You stated in our telephone conversation of October 6th that the corporation in question in fact did not make political contributions.

^{9/} Of course, if either person in fact controlled the contributions of either the corporations or the partnership, cumulation would be appropriate despite the appearance of joint control. You have not provided us facts that would indicate that the control is not shared equally between the two controlling persons.

MANATT, PHELPS, ROTHENBERG & PHILLIPS

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OUR FILE NO.

Kathryn Donovan
General Counsel
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, California 95814

Re: Reporting by Affiliated Persons and Entities

Dear Ms. Donovan:

At the suggestion of Wayne Imberi of the FPPC's technical assistance division, we have prepared this letter to seek advice concerning the application of the FPPC's recently adopted regulation on reporting by committees and affiliated entities, i.e., 2 Cal. Admin. Code §18428, and other applicable precedent (e.g., the Lumsdon and Kahn opinions, 2 FPPC Opinions 140, 151 (1976)), to three situations. The situations are as follows:

1. A general partnership, consisting of two partners (both of which are corporations), is a major donor. The general partnership's contributions are directed and controlled by two individuals, including the (1) president and (2) chairman and chief executive officer of one of the corporate partners. Does one or both of the individuals need to cumulate his contributions with those of the general partnership for the purpose of determining whether the individual may make political contributions and/or whether the individual qualifies as a major donor? Need the general partnership and one or both of the individuals file a single major donor (or political committee) campaign statement reflecting their combined activities?

2. A corporation is a major donor. The majority shareholder, who owns 51% of the corporate shares, directs and controls the corporation's contributions. Does the shareholder need to cumulate his contributions with those of the corporation

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September 28, 1989
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in determining whether the individual may make contributions and/or whether the individual qualifies as a major donor? Need the corporation and the shareholder file a single major donor (or political committee) campaign statement reflecting their combined activities?

3. A law firm partnership, consisting of approximately 50 partners, some of which are professional corporations, is a major donor. The law firm's contributions are controlled and directed by a steering committee consisting of five partners. Some of these five partners are professional corporations. The professional corporations, in turn, are directed and controlled by their respective sole shareholders. Do some or all of the five partners need cumulate their contributions with those of the law firm partnership in determining whether the partners may make political contributions and/or whether the partners qualify as major donors? Need the partnership and some or all of the partners file a single major donor (or political committee) campaign statement reflecting their combined activities? To the extent the partners which are professional corporations need cumulate their contributions or otherwise file a joint statement with the law firm partnership, must the individuals who are the sole shareholders of the professional corporations also cumulate their contributions with the professional corporation and/or the law firm partnership? Must they also jointly file a campaign statement with the professional corporation and/or the law firm partnership?

4. Do the answers to any of the above questions change should the general partnership, corporation, and law firm partnership respectively not qualify as major donors; in other words, should these entities make less than \$10,000 in state and local contributions in a calendar year?

Should you have any questions concerning the advice sought herein, do not hesitate to call. Otherwise, we look forward to your response.

Sincerely,



Philip R. Recht
Manatt, Phelps
Rothenberg & Phillips



California Fair Political Practices Commission

October 6, 1989

Phillip Recht
Manatt, Phelps, Rothenberg,
& Phillips
11355 West Olympic Boulevard
Los Angeles, CA 90064

Re: Letter No. 89-571

Dear Mr. Recht:

Your letter requesting advice under the Political Reform Act was received on October 2, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John Wallace 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,


Kathryn E. Donovan
General Counsel

KED:plh