



California Fair Political Practices Commission

December 26, 1989

Gerald E. Farley
Director Governmental Relations
Pyrodyne American Corporation and
Freedom Fireworks, Inc.
P.O. Box 1170
Norwalk, CA 90651-1170

RE: Your Request for Advice
Our File No. A-89-628

Dear Mr. Farley:

You have requested advice concerning the campaign provisions of the Political Reform Act.^{1/}

FACTS

You are the governmental relations director of two corporations, Freedom Fireworks, Inc. and Pyrodyne American Corporation. Freedom Fireworks, Inc. and Pyrodyne American Corporation are separate corporate entities. Each corporation has the same five stockholders, and Freedom Fireworks, Inc. has one additional stockholder.

In the past, the corporations have filed consolidated major donor statements (Form 461).

In a telephone conversation on November 29, 1989, you indicated that one stockholder directs and controls the contributions made by the two corporations.

QUESTION

Should Freedom Fireworks, Inc. and Pyrodyne American Corporation continue to file consolidated major donor statements?

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.

CONCLUSION

Freedom Fireworks, Inc. and Pyrodyne American Corporation qualify as one major donor committee and should continue to file consolidated major donor statements.

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 type of committee is referred to as a "major donor" committee for purposes of the Act.

The term "person" is 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. Emphasis added.)

Based on the definition of "person," when a group of persons act in concert, they must cumulate their contributions for purposes of qualifying as a "major donor" committee. (Walsh Advice Letter, No. I-88-139, copy enclosed.)

The reporting requirements of affiliated entities are defined in Regulation 18428 (copy enclosed).^{2/} Regulation 18428 provides:

... (b) For purposes of this section, an "affiliated entity" shall be a person or group of persons whose campaign contributions or expenditures are in fact directed and controlled by another. A "principal entity" is the person or group of persons who in fact exercises direction and 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.

(c) The principal and affiliated entities shall file one campaign statement reflecting their combined activities. The campaign statement shall be filed in the name of the principal with an indication that the campaign statement includes the activity of the affiliated entity....

^{2/} Regulation 18428 was amended by the Commission on June 5, 1989. Although the enclosed amended version of the regulation will not become effective until approximately January 31, 1990, it reflects the policy of the Commission and is currently being implemented.

Under Regulation 18428, the stockholder who in fact directs and controls the contributions made by the two corporations is the "principal entity" and the corporations are "affiliated entities." Therefore, consolidated major donor statements are required. Please note that Regulation 18428(c) requires the campaign statements to be filed in the name of the stockholder with an indication that the statement includes the combined activity of the two corporations. We recommend that all three names be listed in the "Name of Filer" section on the major donor statement (Form 461). Further, additional reporting information is required in subsections (c)(1) and (c)(2) of Regulation 18428 in order to clarify the expenditures and contributions made.

Please note also that the corporations must aggregate their contributions for purposes of the contribution limits (Regulation 18531.5.) and are considered a single "person" for purposes of the contribution limitations. Their combined contributions may not exceed \$1,000 to a candidate in a fiscal year, or \$2,500 to a political committee or a political party in a fiscal year. Additionally, affiliated entities are required to notify recipients that their contributions must be cumulated (Regulation 18428(d)).

Please do not hesitate to contact me at (916) 322-5662 if you have additional questions.

Sincerely,

Kathryn E. Donovan
General Counsel



By: Lynda Cassady
Political Reform Consultant

Enclosures

October 26, 1989

FPPC
Oct 30 3 40 PM '89

Fair Political Practices Commission
428 "J" Street
Sacramento
California 95814

Sirs:

I am writing this letter because of a conversation with a member of your staff, Ms Linda Cassidy (hope I am spelling her name correctly).

I want to stress that she and other members of your staff have always been most helpful, cordial and patient.

I am writing to obtain a clear statement of direction from the Commission on how I am to ensure complete compliance with the reporting requirements of the Fair Political Practices Act as amended and as currently interpreted by courts and the Commission.

Based upon a prior conversation with a staff member of the Commission in June of 1980, I filed a consolidated Form 461 reporting expenditures for the first half of 1989, for Freedom Fireworks Incorporated and Pyrodyne American Corporation.

I filed the consolidated, single, statement for both companies because of my conversation with staff of the Commission and the advice given at that time. Commission staff made reasonable efforts, I thought, to understand my description of all relevant facts.

Yesterday, Ms Cassidy suggested that a written request for instructions on how to ensure compliance with applicable laws might be advisable. This letter is that request for that clear statement of direction.

Freedom Fireworks, Inc. and Pyrodyne American Corp. are separate corporate entities under the laws of the state of California. However, ownership of these two corporate persons is exactly the same except that Freedom Fireworks, Inc has one additional stock holder.

All decisions of a political nature are made, based upon my recommendations, by the appropriate officer or employee of both corporations and, most importantly, all decisions are joint. Anything that is done is done by both corporations. All contributions made are coordinated and often are made jointly. Usually, each corporation shares equally in any commitment for any contributions.

Thus, based upon my previous conversation with staff, the single, consolidated Form 461 was filed because the corporations though separate act as a single entity and, Commission staff and I believed that a consolidated, single Form 461 was the most correct way to disclose fully the source of all expenditures of a political variety.

The question, then, is whether this previous advice from Commission staff and, therefore, the previous filing of a consolidated, single Form 461 is, in fact, correct and, therefore whether the previous filing was in full compliance with all applicable laws as interpreted.

Also and very importantly, another filing will be required later for the second half of 1989. I would like this matter resolved in advance so that the next filing will be assured of being done correctly. If, in fact, the earlier filing was not correctly done--even though done as it was based upon advice of Commission staff--I do not want subsequent filings to be similarly defective.

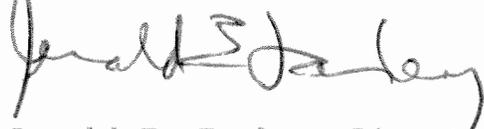
Ms Cassidy informed me that a written request for an opinion would be an appropriate manner in which to get this issue clarified. I hope that this letter is sufficiently clear so that correct advice is possible and available before any filing deadlines.

If further information is needed, please feel free to contact me at 714-526-0700, or at the address below. We can provide any needed additional documentation or more detailed descriptions of the manner in which the political discussions and decisions are made.

I understand fully that the status of the law is subject to change because of court proceedings now pending and, thus, advice given in the past might not be correct today and, further that advice given today might not be correct tomorrow.

I appreciate the time and attention your staff has given in the past to my calls and visits. And I appreciate the time and attention your staff will give to this letter now, as well as the answer I receive from the Commission.

Respectfully,



Jerald E. Farley, Director
Government Relations

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California 90651-1170
714-521-6767

Pyrodyne American Corporation
P O Box 3009
Fullerton
California 92634
714-526-0700



California Fair Political Practices Commission

November 2, 1989

Jerald E. Farley
Government Relations
Pyrodyne American Corporation
P.O. Box 3009
Fullerton, CA 92634

Re: Letter No. 89-628

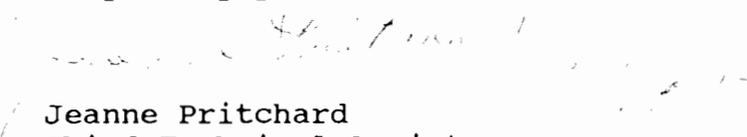
Dear Mr. Farley:

Your letter requesting advice under the Political Reform Act was received on October 30, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5662.

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 the 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,


Jeanne Pritchard
Chief Technical Assistance
and Analysis Division

JP:plh