



California Fair Political Practices Commission

February 2, 1990

Robert E. Leidigh
Olson, Connelly, Hagel and Fong
300 Capitol Mall, Suite 350
Sacramento, CA 95814

Re: Your Request for Informal Assistance
Our File No. I-89-637

Dear Mr. Leidigh:

This is in response to your request for advice regarding the responsibilities of Olson, Connelly, Hagel and Fong, a law firm, Mr. Lance Olson, Mrs. Suzette Olson, and Mr. Leroy Fong, under the contribution limitation provisions of the Political Reform Act (The "Act").¹ You have asked a series of hypothetical questions for the purpose of obtaining guidance on how the provisions of the Act would apply to the circumstances described. While the Commission does not answer hypothetical questions, we can provide informal assistance pursuant to Regulation 18329(c) (copy enclosed).²

QUESTIONS

Mr. Lance Olson is the managing partner of the law firm. Mr. Olson's partnership interest is more than 25% and less than 50%. As managing partner of the law firm, Mr. Olson makes decisions about the expenditure of law firm law funds. This includes the making of campaign contributions by the law firm. Mrs. Suzette Olson is Mr. Olson's spouse and they share a

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).)

community property interest in each other's income. Mr. Leroy Fong is a partner in the law firm, with a partnership interest of more than 10% and less than 20%.

1. How are contributions from the law firm, Mr. Olson, Mrs. Olson and/or Mr. Fong aggregated for purposes of the contribution limits?

2. If the law firm, Mr. Olson, Mrs. Olson, and/or Mr. Fong contribute to a committee which will only make independent expenditures in support of or in opposition to a candidate for election, do any of the contribution limits in the Act apply?

CONCLUSIONS

1. Contributions by the law firm will be aggregated with the contributions by Mr. Olson if Mr. Olson has the sole authority to make decisions regarding contributions by the law firm. Contributions by the law firm will not be aggregated with those by Mrs. Olson or Mr. Fong. Contributions made by Mr. Olson and Mr. Fong will not be aggregated unless they are acting in concert and are, therefore, deemed a political committee.

2. Contributions by the law firm, Mr. Olson, Mrs. Olson and Mr. Fong, to a committee which only makes independent expenditures to support or oppose a candidate for election are not subject to the limits on contributions contained in the Act, provided the procedures specified in Regulation 18535 are followed.

ANALYSIS

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 limits³ as set forth in Sections 85301, 85302 and 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.)

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

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.)

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. 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 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.⁵ Specifically, where the question concerns two contributors which are both entities, Regulation 18531.5 requires cumulation under the following circumstances:

(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-subsidiary 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-subsidiary relationship exists when one business entity owns more than 50 percent of another business entity.

⁵ Regulation 18531.5 is expected to be submitted to the Office of Administrative Law for review sometime in February. 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 April 1990.

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.

1. Are contributions aggregated if the contributions are made by the law firm, Mr. Olson, Mrs. Olson and/or Mr. Fong?

Pursuant to Regulation 18531.5, cumulation is required if the same person directs and controls the decisions of two or more entities. The word "entities" is not defined in the Act or in the regulation; however, we have concluded that it is not intended to include individuals. Accordingly, although Mr. Olson makes decisions regarding contributions by the law firm, and then may make decisions regarding his personal contributions, he does not direct and control "the decision of two or more entities" within the meaning of Regulation 18531.5.

Analyzing the situation pursuant to the Lumsdon Opinion, if Mr. Olson has the sole authority to make decisions regarding contributions by the law firm, and in addition, Mr. Olson makes contributions from his personal funds, we will assume that he is acting to accomplish a common political goal. Under these circumstances, as in the Lumsdon Opinion, we will aggregate contributions by Mr. Olson and the law firm.⁶

Mr. Fong's partnership interest in the law firm is more than 10% and less than 20%. He is not the partner with the sole authority to make contributions on behalf of the law firm. Under such circumstances, contributions by Mr. Fong will not be aggregated with the contributions by the law firm.

It does not appear that Mrs. Olson has any authority to make contributions on behalf of the law firm. Therefore, contributions by Mrs. Olson will not be aggregated with the contributions by the law firm.

⁶ Mr. Olson is the managing partner of the law firm. However he does not own a majority interest in the partnership. If Mr. Olson's decisions regarding contributions by the law firm were subject to review and veto by the majority interest in the partnership, we would not assume that when Mr. Olson also makes contributions from his personal funds, he is acting to accomplish a common political goal. Under such circumstances contributions by the law firm and Mr. Olson would not be aggregated.

If evidence is present that Mr. Olson and Mr. Fong acted in concert" within the meaning of Section 85102(c)⁷ so as to be deemed to be a political committee, their combined contributions would be subject to the limits on contributions by political committees contained in the Act.⁸ In the absence of such evidence, contributions by Mr. Olson and Mr. Fong would not be aggregated.

2. Limits applicable to contributions by the law firm, Mr. Olson, Mrs. Olson and/or Mr. Fong to an independent expenditure committee.⁹

As noted above, Section 85102(c) defines a "political committee" as a committee of persons who receive contributions from two or more candidates and, acting in concert, makes contributions to candidates. Section 85102(d) defines a "broad based political committee" 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.

⁷ Section 85102(c) defines a "political committee" as follows:

"Political committee" means a committee of persons who receive contributions from two or more persons and acting in concert makes contributions to candidates.

⁸ Regulation 18531.5 provides that if the same person or a majority of the same persons directs and controls the decisions of two or more entities to make contributions or expenditures to support or oppose a candidate for elective office, the entities shall be deemed to be a single person, political committee for purpose of the contribution limits. If Mr. Olson and Mr. Fong are deemed to be a political committee within the meaning of Section 85102(c), the committee would be deemed an entity within the meaning of Regulation 18531.5. Under such circumstances if Mr. Olson and Mr. Fong together own a majority partnership interest in the law firm, contributions by the law firm may be aggregated with the contributions by the Olson/Fong political committee, if Mr. Olson and Mr. Fong in fact direct and control the contributions of the law firm and the political committee.

⁹ We assume that when you allude to an independent expenditure committee, you are referring to committee formed pursuant to subdivision (b) of Section 82013. Subdivision (b) of Section 82013 provides in relevant part that any person or combination of persons who "[m]akes independent expenditures totaling one thousand dollars (\$1,000) or more in a calendar year" is deemed to be a committee.

Thus, by definition, an essential aspect of political committees and broad based political committees is that they make contributions to candidates. Section 85302 places limits on contributions by persons to a political committee, a broad based political committee or a political party to make contributions to candidates.¹⁰ The committee, discussed in your question, does not make contributions to candidates. Accordingly, the limits contained in the Act do not apply to contributions made to a committee which only makes independent expenditures in support of or in opposition to a candidate for election, but which does not make contributions to candidates. If a committee makes independent expenditures and, in addition, makes contributions to candidates, contributions to the committee may be subject to the limits described in the Act.

Section 85303(c) states that unlimited financial or other support may be provided to political committees or broad based political committees provided such support is used for purposes other than making contributions directly to candidates for elective office. In December 1989, the Commission adopted Regulation 18535¹¹ (copy enclosed), which interpreted Section 85303(c), and outlined the circumstances permitting such contributions in excess of the limits provided in the Act.

Presumably, the committee which is the intended recipient of the contributions is not a candidate controlled committee. Under these circumstances, if the funds are used to make independent expenditures in support of or in opposition to a candidate for election, they are used for a purpose "other than to make contributions to candidates for elective office" within the meaning of subdivision (d) of Regulation 18535. Accordingly, they are not subject to the limits on contributions contained in the Act. (Section 85303(c).) However, the contributor must follow the procedure specified in subdivision (c)(2) of Regulation 18535 to inform the committee to which such contribution is made that the contribution is for a purpose other than to make contributions to candidates for elective office.

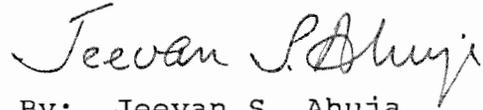
¹⁰ As noted above, in addition to the limits on contributions to committees contained in Section 85302, Section 85301 describes the limits on contributions by persons to candidates and Section 85303 describes the limits on contributions by committees to candidates.

¹¹ Regulation 18535 is expected to be submitted to the Office of Administrative Law for review sometime in February. 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 April 1990.

I trust this letter has provided you with the guidance you requested. If you have any further questions regarding this matter, please call me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel



By: Jeevan S. Ahuja
Counsel, Legal Division

KED/JSA/aa

Enclosures

Law Offices of
OLSON, CONNELLY, HAGEL & FONG

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November 3, 1989

Kathryn E. Donovan
General Counsel
FAIR POLITICAL PRACTICES COMMISSION
428 - J Street, Suite 800
Sacramento, CA 95814

RE: REQUEST FOR FORMAL WRITTEN ADVICE

Dear Ms. Donovan:

I write seeking formal written advice on behalf of Lance Olson, Leroy Fong and Suzette Olson and the law firm of OLSON, CONNELLY, HAGEL & FONG. This advice request is based upon an intended course of conduct; however, that course of conduct may be altered dependent upon the Commission's advice.

FACTS

Lance Olson is managing partner of the law firm OLSON, CONNELLY, HAGEL & FONG. Mr. Olson's partnership interest is more than 25% and less than 50%. Leroy Fong is a partner of the law firm, with a partnership interest of more than 10% and less than 20%. Suzette Olson is the spouse of Lance Olson. They share community property interests in each other's income.

As managing partner of the law firm, Mr. Olson, makes decisions about the expenditure of law firm funds. This includes the making of campaign contributions by the law firm. In addition, from time to time, Mr. Olson, Mrs. Olson, and Mr. Fong may wish to make contributions to candidates from their personal funds.

QUESTIONS

The law firm is aware of the Commission's action in adopting Regulation 18531.5 at its June 6 meeting. The following questions are asked for the purpose of obtaining guidance on how that regulation will apply in the following types of circumstances.

1. If Mr. Olson contributes to a candidate from his personal funds and the firm also contributes to the candidate from its funds, must those contributions be aggregated for purposes of the contributions limits?

LANCE H. OLSON
BRUCE J. HAGEL
LEROY Y. FONG
ROBERT E. LEIDIGH

OF COUNSEL
LLOYD G. CONNELLY, Member
California State Legislature

Kathryn E. Donovan
November 3, 1989
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2. If the law firm contributes to a candidate from its funds and Mrs. Olson also contributes to the candidate from personal funds (again, assume she and Mr. Olson have a joint checking account), must those contributions be aggregated for purposes of the contribution limits?

3. If Mr. Olson and Mr. Fong each makes a contribution to the same candidate from personal funds, must those contributions be aggregated for purposes of the contribution limits?

4. If Mr. Fong contributes to a candidate from his personal funds and the law firm also contributes to the candidate from its funds, must those contributions be aggregated for purposes of the contribution limits?

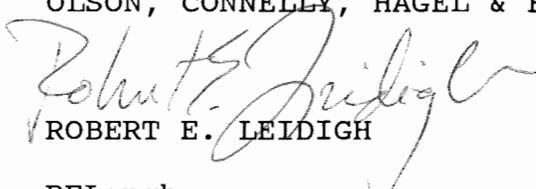
5. If the law firm, Mr. Olson, Mrs. Olson, and/or Mr. Fong contribute to an independent expenditure committee which will only make independent expenditures in support of or opposition to a candidate for election, do any of the Proposition 73 limits apply?

6. If the answer to question five is in the affirmative, which limits apply and do the answers to questions one through four apply as well to the making of contributions to the independent expenditure committee?

In the analysis portion of your response to these questions, please address the application of the terms "person" and "entity" as those terms are used in subdivision (a) of Regulation 18531.5.

Very truly yours,

OLSON, CONNELLY, HAGEL & FONG


ROBERT E. LEIDIGH

REL:pgh



California Fair Political Practices Commission

November 8, 1989

Robert E. Leidigh
Olson, Connelly, Hagel & Fong
300 Capitol Mall, Suite 350
Sacramento, CA 95814

Re: Letter No. 89-637

Dear Mr. Leidigh:

Your letter requesting advice under the Political Reform Act was received on November 3, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Jeevan Ahuja 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,

A handwritten signature in cursive script that reads "Kathryn E. Donovan".

Kathryn E. Donovan
General Counsel

KED:plh