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State of California



Fair Political Practices Commission

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|----------------------|-----|----------------|-----|-----------------|-----|-------------|-----|----------------------|
| Technical Assistance | ••• | Administration | ••• | Executive/Legal | ••• | Enforcement | ••• | Conflict of Interest |
| (916) 322-5662 | | 322-5660 | | 322-5901 | | 322-6441 | | 322-6444 |

July 26, 1979

79-087

Mr. Michael Roster
 McKenna and Fitting
 3435 Wilshire Boulevard
 Twenty-Eighth Floor
 Los Angeles, California 90010

Dear Mr. Roster:

Thank you for your letter dated July 16, 1979 in which you asked if several related companies may file a consolidated Form 650 (Employers of Lobbyists and Persons Spending \$250 or More to Influence Legislative or Administrative Action).

Based upon the facts presented in your letter the Commission staff has concluded that the related subsidiaries may file a consolidated Form 650.

If you have any further questions, please contact me.

Sincerely,

J. Richard Eichman
 J. RICHARD EICHMAN
 Accounting Specialist

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July 16, 1979

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Fair Political Practices Commission
P. O. Box 807
Sacramento, California 95804

Attention: Mr. Richard Eichman

Re: Filing of Form 650 by Affiliated Entities

Gentlemen:

By this letter, we are requesting comments on the appropriateness of several related companies filing a consolidated Form 650 (the form used for employers of lobbyists and persons making "payments to influence").

We are counsel to a non-California holding company which has numerous separately incorporated subsidiaries in California. The holding company has taken special steps to assure that it does not coordinate or control in any way the campaign contribution or lobbying activities of these subsidiaries.

Three of the subsidiaries, however, engage in closely related activities. Indeed, Subsidiaries "A" and "B" have identical officers and engage in virtually the same activities and are so closely interrelated that Subsidiary B operates almost as a division of Subsidiary A.

A third subsidiary, Subsidiary "C", provides support services to Subsidiaries A and B, has a partial

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overlap of officers with Subsidiaries A and B, but also performs some work for other entities other than Subsidiaries A and B and which are in no way affiliated with Subsidiaries A and B or the holding company.

The campaign contribution activities of Subsidiaries A, B and C are such that under recently adopted FPPC Regulation Section 18428, Subsidiary A will likely be deemed a "parent" for reporting purposes, and campaign contributions of Subsidiaries A, B and C will be reported on a consolidated basis in accordance with the provisions of this new regulation.

The question now arises whether these same entities may file a Form 650 on a consolidated basis as well. The specific facts are such that Subsidiaries A and B have retained, or may retain, a lobbyist. Although both Subsidiaries A and B may be signatories to the contract employing the lobbyist, as indicated earlier, Subsidiaries A and B operate in many respects as a single entity. The directions given to the lobbyist, moreover, will be by persons who serve identical positions for Subsidiaries A and B, although payments to the lobbyist will likely be made by one entity only in order to simplify the accounting details. The lobbyist nevertheless will likely perform services for both Subsidiaries A and B.

Subsidiary C's general business function largely is to provide support services to Subsidiaries A and B. In this regard, Subsidiary C may prepare economic analyses and similar background materials which are essential for the corporate planning of Subsidiaries A and B. There may be instances, however, when these background materials, although prepared initially for corporate purposes and not with an intention to influence legislation, may be given to the retained lobbyist who, in turn, may use the reports in connection with his lobbying activities.

We note that pursuant to Section 82047 of the Act, the term "person" includes "any...group of persons acting in concert." This, we believe, fairly characterizes the activities of the three subsidiaries described above. In this regard, the conclusion regarding consolidated reports in the area of campaign contributions appears to have turned in part on the term "committee", which is defined in Section 82013 of the Act to mean "any person or combination of persons". This definition of "committee" is redundant, to the extent the term "person" is defined in Section 82047 as including a "group of persons". Accordingly, we believe the fact that Section 86108 of the Act is directed to "any person", and the term person is defined to include a combination of persons, supports the position that a consolidated Form 650 is appropriate.

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In reviewing Form 650, we find that the only practical difference between the entities filing a consolidated report instead of separate reports (assuming the entities individually would meet the threshold requirement for filing such reports) would be whether certain costs are reported in Section B-1 or B-3. In this regard, we note that if the three entities are required to file separate Forms 650, this would require an elaborate internal bookkeeping system to determine when an employee is working on behalf of Subsidiary A as opposed to Subsidiary B as opposed to Subsidiary C. It would further require an attempt to pay employees on an allocated basis among the three entities (which is not currently the case); and it even could lead to the incongruous result that if an employee were to spend 27% of his time on lobbying-related activities, but equally divided this time among the three entities, the activities of that employee would fall within the 10% de minimus test.

We further note that the only information that might be lost if the three entities were to report on a consolidated basis (and therefore report some activities under Section B-3 instead of B-1) would be a specific itemization of costs among the entities (which might otherwise be shown in the "name and address of payee" portion of Section B-1). If this is considered a significant loss of data, I suspect the entities would be willing to attach an addendum to Section B-3 which shows this information.

We believe the questions posed above are largely technical in nature and can readily be resolved on an informal basis. Please let me know if any additional information is needed in connection with this request. In addition, although the undersigned has been authorized to raise this request on an informal basis, as has been done here, if it proves necessary to treat this as a formal opinion request, further approval of our clients would be required, and thus we wish to reserve the right to withdraw the request under those conditions.

With best regards,

Very truly yours,

MCKENNA & FITTING

By


Michael Roster

MR/kjs