



## FAIR POLITICAL PRACTICES COMMISSION

P.O. Box 807 • 428 J Street • Sacramento, CA 95812-0807

(916) 322-5660 • Fax (916) 322-0886

August 8, 2001

Lisa Ott, Campaign Manager  
Larry Willey for State Senate  
P.O. Box 2745  
Clovis, CA 93613-2745

**Re: Your Request for Advice  
Our File No. I-01-103**

Dear Ms. Ott:

This letter is in response to your request for advice on behalf of Larry Willey, a candidate for State Senate, regarding the campaign provisions of the Political Reform Act (the "Act").<sup>1</sup>

### QUESTIONS

1. If three different partners in a partnership each direct and control their partnership to make a separate \$3,000 contribution to Mr. Willey, may he accept a total contribution amount of \$9,000 from that business?
2. If not, is Mr. Willey also prohibited from similarly accepting a total contribution amount of \$6,000 from a corporation where two board members each direct and control their corporation to make separate \$3,000 contributions to Mr. Willey?

### CONCLUSION

1-2. Under the Act, a business is a "person" and subject to the \$3,000 contribution limit of Section 85301. Section 85311 provides that a contribution of an entity whose contributions are directed and controlled by an individual shall be aggregated with the contributions made by that individual. Moreover, the Act makes no distinction between a business which is a partnership and one which is a corporation; each type of entity is a "person" under the Act and is subject to the provisions of Sections 85301 and 85311.

---

<sup>1</sup> Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

Therefore, Mr. Willey may not accept contributions totaling \$9,000 from the partnership or \$6,000 from the corporation.

### FACTS

You are the campaign manager for Larry Willey, who has filed papers to run for State Senate District 16. You have inquired about the contribution limits applicable to Mr. Willey when he receives contributions from partners or board members of business entities directed and controlled by those individuals. Specifically, you have asked whether Mr. Willey may accept contributions from a partnership with three partners who each wish to direct and control the partnership to contribute separate \$3,000 contributions to him aggregating to a total contribution amount of \$9,000. You have also asked whether he may accept a total contribution amount of \$6,000 from a corporation where two board members each direct and control their corporation to make separate \$3,000 contributions to Mr. Willey.

### ANALYSIS

On November 7, 2000, the voters approved Proposition 34, which imposes contribution limits on candidates for elective state office.<sup>2</sup> (Section 85301.) Section 85301(a) provides that:

“A person, other than a small contributor committee or political party committee, may not make to any candidate for elective state office other than a candidate for statewide elective office, and a candidate for elective state office other than a candidate for statewide elective office may not accept from a person, any contribution totaling more than three thousand dollars (\$3,000) per election.” (Section 85301(a).)

Additionally, under the Act:

“‘Person’ means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert.” (Section 82047.)

You have asked whether Mr. Willey may accept from a partnership a total contribution amount aggregating to \$9,000. Because a partnership is a “person” under the Act, Mr. Willey may not accept a contribution of more than \$3,000 per election from the partnership. The same conclusion applies to a “corporation;” no distinction is made between a partnership and a corporation for purposes of the contribution limits since a corporation is also a “person” under Act.

---

<sup>2</sup> The provisions of Proposition 34 became effective on January 1, 2001.

In addition, Section 85311 of the Act provides:

“(b) The contributions of an entity whose contributions are *directed and controlled by any individual* shall be aggregated with contributions made by that individual and any other entity whose contributions are directed and controlled by the same individual.” [Emphasis added.] (Section 85311.)

For purposes of Chapter 5 of the Act, “entity” means “any person,” other than an individual. (*Ibid.*)

Under Section 85311(b), for purposes of the contribution limits, a contribution made by a partnership at the direction and control of a particular partner is aggregated with contributions made by that partner. A similar analysis applies to board members who direct and control the contribution of its corporation.<sup>3</sup>

The Commission plans to address Proposition 34 provisions regarding aggregation and other Section 85311 issues as part of its implementation of Proposition 34 later this year. At present, however, based on the facts in this letter and Section 85311, we conclude that when partners or board members direct and control the contribution of a business entity, the business entity’s contribution is aggregated with the contributions the individual may permissibly make.

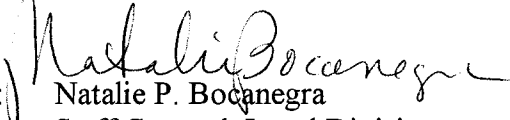
---

<sup>3</sup> Under prior provisions of the Act, whether an individual directs and controls the making of a contribution depended on the particular facts surrounding how the contribution was made. In its opinion entitled *In re Lumsdon* (1976) 2 FPPC Ops. 140, the Commission concluded that cumulation (aggregation) was required where separate contributions were made by a corporation and the corporation’s majority shareholder. The rationale for the conclusion of this opinion, which analyzed provisions of Section 82013 relating to major donors, was that one person was in fact controlling both his personal contributions and those of the corporation. (*Id.*; *Newton* Advice Letter, No. A-90-113.) Other decisions by the Commission and its staff interpreting prior law have required aggregation of contributions where the factual circumstances have differed slightly. (See *In re Kahn* (1976) 2 FPPC Ops. 151 (contributions by parent company and wholly owned subsidiary); *Leidigh* Advice Letter, No. I-89-637 (contributions by a law firm and its partners).)

If you have any other questions regarding this matter, please contact me at (916)  
322-5660.

Sincerely,

Luisa Menchaca  
General Counsel

By:   
Natalie P. Bocanegra  
Staff Counsel, Legal Division

NPB:jg  
Enclosure: Section18329

I:\AdviceLtrs\01-103