FAIR POLITICAL PRACTICES COMMISSION
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December 2, 2003

Steve Fechner, President
Surf Management, Inc.
Post Office Box 3217
Torrance, CA 90510-3217

Re: Your Request for Informal Assistance
Our File No. I-03-263

Dear Mr. Fechner:

This letter is in response to your request for advice regarding the campaign provisions of the Political Reform Act (the "Act").[1] Because your questions relate to local contribution limits, we provide you with informal assistance regarding the Act's contribution reporting requirements.[2] We cannot advise you on specific details of contribution limits included in a local campaign ordinance, and we urge you to seek assistance on that score from your city counsel.

QUESTIONS

1. If a $1,000 check is written to a candidate from your company's bank account, would that contribution be regarded as having been made by you?

2. May each of your sisters make a $1,000 contribution from her personal bank account?

3. May your spouse make a personal contribution, written from your joint checking account, without that contribution being aggregated with a contribution to the same candidate which you direct on behalf of your business?

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[1] Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

[2] Informal assistance does not confer the immunity provided by formal written advice. (Regulation 18329(c)(3), copy enclosed.)

CONCLUSIONS

Question 1. If you direct and control a contribution, made from your company's bank account, that contribution would be regarded under the Act as having been made by both you and your company.

Question 2. Given the facts as we understand them, contributions made by any one of your sisters would *not* be aggregated with contributions made by you or your company, so long as she did not direct and control a contribution from your company.

Question 3. Under the Act, a contribution made from a joint checking account normally is attributed to the spouse who signs the check, and not to the other spouse, unless an accompanying document directs otherwise.

FACTS

You and your three sisters own a company called Surf Management. You are the company president, and the only sibling that is active in the management of the company. You direct and control the issuance of checks from the company.

You wish to make contributions to city council campaigns for the City of Torrance. By local ordinance, there is a $1,000 per person contribution limit for these campaigns. You asked the city clerk for guidance on the circumstances under which campaign contributions ostensibly made by one person are aggregated with contributions made by one or more other persons, for purposes of compliance with contribution limits. The city clerk advised you that the City of Torrance follows the guidelines of the FPPC in this area, and directed you to refer your questions to the FPPC.

ANALYSIS

The Act has long required disclosure of campaign contributions, emphasizing information on the sources of these contributions. The Commission concluded at an early date that contributions from two or more persons should be "aggregated" under certain circumstances. When contributions are "aggregated," the various contributors are treated as a single person for reporting purposes, and for determining compliance with any contribution limits that might be in effect.

The Commission first described the circumstances under which contributions of two or more persons would be aggregated in two 1976 opinions, *In re Lumsdon* 2 FPPC Ops. 140, and *In re Kahn* 2 FPPC Ops. 151. At present, section 85311 (added to the Act by Proposition 34 to govern state, but not local, candidates), and regulation 18428 (which *does* govern local candidates), embody the principles articulated by *Lumsdon* and *Kahn*.

In *Lumsdon* (copy enclosed), the Commission was required to decide whether an individual who was president and majority shareholder of a closed corporation, as well as president of a second corporation and one of three trustees of a foundation owning all the

stock of that second corporation was, together with the two corporations and the foundation, a "combination of persons" constituting a "committee" as defined by the then-current version of section 82013, which provided in pertinent part that:

> "'Committee' means any person or combination of persons who directly or indirectly receives contributions or makes expenditures or contributions for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of one or more candidates, or the passage or defeat of any measure..."

Relying on the Act's definition of "person" at section 82047, together with dictionary and case law definitions of "combination," the Commission concluded that the Act's definition of "committee" referred to:

> "[A]n alliance of persons or entities formed for the purpose of influencing the voters for or against the nomination or election of one or more candidates or the passage or defeat of one or more measures. In addition, we conclude that the necessary alliance can be evidenced by an agreement or mutual understanding which can be implied or expressed." (*In re Lumsdon*, *supra*, 2 FPPC Ops. at 143.)

Because the majority shareholder of a closed corporation normally exercises almost complete control over the activities of the corporation, the Commission *presumed* that the majority shareholder in *Lumsdon* controlled the contribution decisions of the closed corporation, along with all other decisions of the corporation. The majority shareholder and the closed corporation were thus a "combination of persons" within the meaning of section 82013, and therefore a "committee." This presumed affiliation warranted aggregation with the majority shareholder of contributions ostensibly made by the corporation, and this presumption would be "inapplicable only if it is clear from the surrounding circumstances that [the majority shareholder] and [the corporation] acted completely independently of each other." (*Id.* at 143.)

In *Kahn* (copy enclosed), the Commission applied the same logic to presume that a parent corporation controlled the contribution decisions of its subsidiaries. But as in *Lumsdon*, the Commission recognized that aggregation would not follow when it could be demonstrated that parent and subsidiary acted "completely independently of each other" in their contribution decisions. In *Kahn*, the directors of the parent and subsidiary were largely the same individuals, yet day to day decisions for the subsidiary were not made by the directors, but by officers of the subsidiary, most of whom were not directors of either corporation. In particular, officers of the subsidiary made all contribution decisions, acting with discretion in the interest of the subsidiary, without consulting or involving the directors. The only intervention by the directors, it appears, was their establishment of a ceiling beyond which the officers could not authorize expenditures, including campaign contributions, without clearance from the directors. However,

contributions made by the subsidiary were apparently always well below that ceiling, and the directors were accordingly never consulted on contribution decisions.[3]

With these facts in mind, the Commission concluded that the parties before it were *not* a "combination of persons" whose contributions must be aggregated, because in fact the parties had "acted completely independently of each other" in making the contribution decisions. (*Kahn, supra*, 2 FPPC Ops. at 155-156.)

Simply stated, the core principle articulated in *Lumsdon* and *Kahn* is that contributions should be aggregated whenever one person or group of persons exercises actual control over the contribution decisions of a second person. Presumptions of such control are permissible in appropriate cases, but such presumptions may be rebutted by showing that the person presumably under "control" in fact acted independently in making contribution decisions. Neither opinion employed the compound term "directs and controls," although cognate words are juxtaposed in *Lumsdon* as follows:

> "By definition a majority shareholder exercises almost complete control.... He... appoints the board of directors and the officers of the company and they are subject to his ultimate direction...."

Lumsdon and *Kahn* treated contributions that would be aggregated for reporting purposes, as currently provided in regulation 18428 (reporting by "affiliated entities") and for contribution limits, under the rules now given in section 85311 (aggregation of contributions to state candidates). Under the Act, section 85311 is the rule most directly pertinent to your first two questions, but that statute is expressly directed to contributions made to *state* candidates, and does not apply to the contributions you anticipate making under a local ordinance limiting contributions to local candidates. Since the provisions of your local ordinance may differ significantly from the requirements imposed on state candidates by section 85311, you should consult with your city attorney regarding interpretation of your local ordinance.

Regulation 18428 does govern disclosure and attribution of contributions to candidates in local elections, and since regulation 18428 implements the rules announced in *Lumsdon* and *Kahn*, we can apply these aggregation rules to your first two questions.[4]

When a person who directs and controls the expenditures of a business entity causes a campaign contribution to be made by the business entity, the contribution would be regarded as having been made by *both* the business entity *and* the person who directed the business entity to make the contribution. For example, if there is a limit of $1,000 per

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[3] On the other hand, since the president of a corporation, who was only one of three trustees holding the stock, would normally exercise less control over corporate decisionmaking than would a majority shareholder, the Commission did *not* presume that this individual formed a "combination of persons" with the second corporation.

[4] You should check with your city attorney to determine how your local ordinance interacts with regulation 18428. Generally, a local ordinance may not conflict with the Act, but it may impose additional requirements. (Section 81013.)

candidate in your city election, once an individual with control over the business entity's expenditures directs that entity to make a contribution of $1,000 to a given candidate, neither the business nor the person who directed the contribution may make another contribution to the same candidate in the same election. Pursuant to regulation 18428, the contribution would be reported as a contribution from *both* the individual *and* the business entity.

Your second question appears to be the obverse of the first one. Assuming that your control of the company's expenditures means that your sisters do not "direct and control" the company's contributions, then the Act would not require that the company's contributions be aggregated with your sisters' personal contributions. In this case, your sisters would report their contributions under their own names.[5]

Your final question, regarding contributions made by your spouse against your joint checking account, are answered by regulation 18533, which explains the Act's treatment of such cases. This regulation provides:

> "(a) A contribution made from a checking account by a check bearing the printed name of more than one individual shall be attributed to the individual whose name is printed on the check and who signs the check, unless an accompanying document directs otherwise. The document shall indicate the amount to be attributed to each contributing individual and shall be signed by each contributing individual whose name is printed on the check. If each individual whose name is printed on the check signs the check, the contribution shall be attributed equally to each individual, unless an accompanying document signed by each individual directs otherwise.
> If the name of the individual who signs the check is not printed on the check, an accompanying document, signed by the contributing individuals, shall state to whom the contribution is attributed.
> (b) For purposes of this regulation, each contributing individual is a 'person' as defined in Government Code section 82047 and is subject to the contribution limitations set forth in Government Code sections 85301 and 85303.
> (c) If the individual who signs the check or accompanying document is acting as an intermediary for another contributor, this regulation shall not apply and Regulation 18432.5 shall apply instead."

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[5] You have not told us how the ownership of the company is distributed among the four siblings. We assume for purposes of this letter that no one sibling owns more than fifty percent of the company.

We trust that this rule explains how the Act would treat contributions made by your spouse from your joint checking account. Your question does not suggest that your wife would be acting as an intermediary for any other person in making this contribution, but we enclose a copy of regulation 18432.5 for your information.

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

Sincerely,

Luisa Menchaca
General Counsel

By: Lawrence T. Woodlock
Senior Counsel, Legal Division

Enclosures
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