

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 ••• 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance •• Administration •• Executive/Legal •• Enforcement
(916) 322-5662 322-5660 322-5901 322-6441

June 18, 1985

David P. Gardner, President
Office of the President
Berkeley, CA 94720

Re: Your Request for Advice
Our File No. A-85-127

Dear Mr. Gardner:

At its meeting yesterday, the Fair Political Practices Commission considered your May 22, 1985 request for advice concerning the participation by certain Regents in decisions by the University of California Board of Regents on proposals for the divestment of University investments in companies doing business in South Africa. Based on the requests from UC General Counsel Donald Reidharr and four individual Regents, opinions and information supplied by Mr. Reidharr and others, the FPPC staff memorandum of June 12, 1985, the June 15, 1985 memorandum submitted by the UC General Counsel's office, and the oral testimony presented before the Commission, the Commission has directed staff to provide the following advice:

(1) A Regent is required by the Political Reform Act (Government Code Section 87100) to disqualify himself or herself from a decision on divestment if it is reasonably foreseeable that the effect of that decision could increase or decrease the value of stock held by the Regent or by a member of the Regent's immediate family by \$250 or more. This applies to stock in any company traded on a national stock exchange.

(2) If a Regent or a member of the Regent's immediate family has stock held in a trust, the above rule applies if the Regent or his or her spouse controls whether the stock held by the trust will be bought or sold. If neither the Regent nor his or her spouse has such control over the trust, the trust will be treated as a business entity. In such a situation, the Regent shall be required to disqualify himself or herself only if it is reasonably foreseeable that a decision would have an effect of \$10,000 or more on the trust.

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(3) It is possible that the Regents will be asked to decide whether UC should divest stocks of companies doing business in South Africa, with no time limit placed on divestment, with an instruction to the Treasurer simply to follow UC's usual prudent investment policies, or in accordance with one of the other options set forth in the UC Treasurer's Report. It is not reasonably foreseeable that such a decision would affect the value of the stock to be divested. Therefore, no Regent would be disqualified on the basis of his or her personal stockholdings from such a decision.

(4) On the other hand, the Regents may be asked to divest immediately, or within a relatively short time frame such as one or two years. It is reasonably foreseeable that such a public decision by the Regents would affect the price of stock to be sold by UC. If any Regent owns enough of the stock covered by such a decision that the price drop would decrease that Regent's holdings by \$250 or more, disqualification would be required.

As you can see, even Regents who own stock in companies as to which UC is considering divestment can probably vote on the majority of motions likely to be placed before the Regents. Disqualification by an individual Regent will be required only if the following three conditions are met:

(1) The proposal before the Regents involves divestment of stock which the individual Regent (or his immediate family) also owns.

(2) The proposal must require divestment either immediately or within a limited period of time.

(3) The Regent (or his or her immediate family) must own enough of the stock that the reasonably foreseeable effect of the price decrease on the Regent's portfolio is at least \$250.

Very truly yours,

Barbara A. Milman
General Counsel

BAM:nwm

A. 85-187

UNIVERSITY OF CALIFORNIA

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DAVID PIERPONT GARDNER
President

OFFICE OF THE PRESIDENT
BERKELEY, CALIFORNIA 94720
(415) 642-1441

May 22, 1985

Fair Political Practices Commission
1100 K Street
Sacramento, California 95814

Re: Request for Advice: Participation as a Regent of the
University of California in Decision to Consider
Divestment of Companies Doing Business in South Africa

Dear Sir or Madam:

I am a Regent of the University of California, and I am writing to request an advice letter. At its meeting of June 20-21, 1985, the Board of Regents will be considering whether to sell some or all of the securities in its retirement and endowment funds which are issued by companies doing business in South Africa. I have a financial interest in the following company which I am informed is in the University's portfolio and does business in South Africa:

I have investments of more than one thousand dollars in The International Business Machines Corporation (24 shares).

The above company is a publicly traded company on the New York Stock Exchange and is, therefore, subject to the regulation defining "material financial effect" found at Cal. Admin. Code, Title II, § 18702.2. Attached is a letter dated May 10, 1985 from the General Counsel of The Regents, Donald L. Reidhaar, setting forth relevant information and concluding that a divestment decision by The Regents will not foreseeably have a financial effect on the company. General Counsel Reidhaar has also informed me that he will attempt to provide you with any further information you may need. His telephone number is (415) 642-2822. His address is Donald L. Reidhaar, General Counsel, Office of the General Counsel, 590 University Hall, University of California, Berkeley, California 94720.

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I request that you provide me an advice letter on whether I am permitted to participate in the decision or decisions to be made by the Board of Regents regarding divestment.

Thank you very much for your assistance.

Sincerely,

A handwritten signature in cursive script, reading "David Pierpont Gardner". The signature is written in dark ink and is positioned above the printed name.

David Pierpont Gardner

Enclosure

cc: General Counsel Reidhaar