

July 6, 1977

77-06-171

Honorable John Garamendi
State Senate
State Capitol
Sacramento, CA 95814

Dear Senator Garamendi:

On May 6, 1977, you sent a letter to Dawn Wiser of the Commission staff in which you questioned whether you were required to disclose the assets of a revocable trust which names your wife as a beneficiary. By letter dated May 20, 1977, I indicated that the staff had interpreted the Act to require such disclosure.

At a recent meeting, the Commission directed the staff to reconsider its advice to you and to reassess generally the treatment of trusts in the Political Reform Act with an eye to possible revision by regulation or legislative amendment. The staff is presently engaged in such a reexamination. In the meantime, the Commission has asked me to advise you that you need not disclose the interest in question until we have completed our review.

We would welcome any additional comments you may have on this matter.

Sincerely,

Michael J. Baker
Chief
Legal Division

MJB:jo

bcc: Dawn Wiser

State of California



Fair Political Practices Commission

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

May 20, 1977

Honorable John Garamendi
The State Senate
State Capitol
Sacramento, CA 95814

Dear Senator Garamendi:

We have received your letter to Dawn Wiser, dated May 6, 1977, in which you question whether you need to disclose the assets of a revocable trust which names your wife as a beneficiary. The obligation to disclose these assets arises from Government Code Section 82034 which defines what "investments" must be disclosed, in relevant part, as follows:

Investments of an individual include a pro rata share of investments of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a ten percent interest or greater.

Thus, if your wife's beneficial interest in the trust is ten percent or greater, you are obligated to disclose all assets of the trust of which your wife's pro rata share is \$1,000 or more.

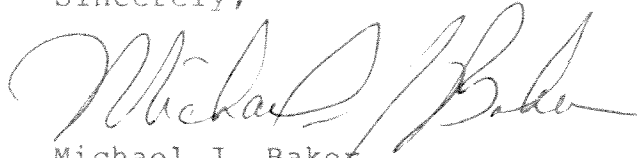
In your letter you point out the similarity between a person being named as a beneficiary in a revocable trust and being named as a beneficiary in a will, and note that a filer has no disclosure obligations in the second situation. While these two situations are similar, we must be guided by the language of the Act which specifically requires disclosure of the assets of a trust in which the filer or his or her spouse is a beneficiary, but does not require disclosure of a beneficial interest in a will.

We also do not think it is significant that this is a revocable rather than an irrevocable trust. First, the Act refers simply to "trusts" and suggests no distinction along these lines. Moreover, while it is true that your wife's interest in the trust may be terminated if the trust is revoked, so long as the revocable trust is in effect, the potential benefit to your wife as beneficiary is the same as it would be under an irrevocable trust.

Honorable John Garamendi
May 20, 1977
Page Two

I hope this information answers your question. If I can provide any further clarification, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Michael J. Baker". The signature is written in dark ink and is positioned above the typed name.

Michael J. Baker
Chief
Legal Division

MJB:plh

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NATURAL RESOURCES
& WILDLIFE
PUBLIC UTILITIES, TRANSIT
& ENERGY

SENATOR JOHN GARAMENDI
THIRTEENTH DISTRICT

California Legislature

VICE CHAIRMAN
HEALTH AND WELFARE COMMITTEE

May 6, 1977

Ms. Dawn Wiser
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

Dear Ms. Wiser:

I am in receipt of your letter requesting that I disclose those assets that you claim my wife has a property interest in, relative to the Revocable Trust in which she is named as a beneficiary. While I am willing to provide you with this information, I do not believe it is necessary because there is no real interest, owned or controlled, by my wife in the assets of that Trust. The Trust is a Revocable Trust established by my wife's mother for estate purposes, primarily to simplify the management of her assets upon her death. My wife's interest results from her being named as one of several beneficiaries. She is not a trustee of the Trust and can in no way influence investment or any other decision concerning the assets. Since the Trust is revocable at any time, my wife could be removed as a beneficiary. She has absolutely no control over that situation.

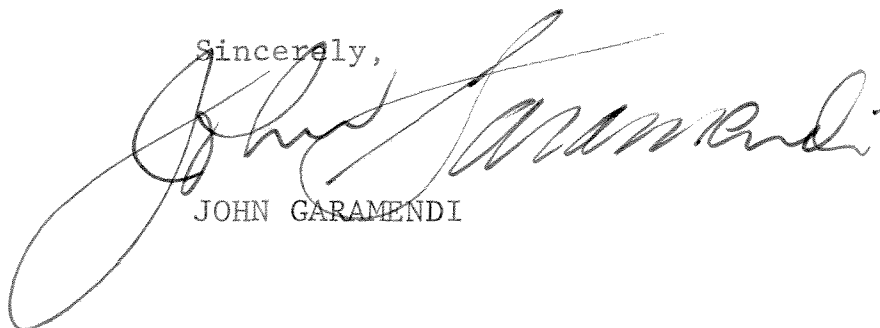
The circumstances surrounding this Trust are very similar to those surrounding an individual who is named as an heir in a will. In such a case the individual may know that he is an heir, he may know what the assets are, yet his real interest in those assets does not materialize until the person who writes that will dies. Like my wife, the person named as an heir in the will cannot sell, transfer, encumber or in fact deal with those assets at all. Therefore, like my wife who is a beneficiary of a Revocable Trust, the named heir in a will has no real property interest.

Ms. Dawn Wiser
May 6, 1977
Page Two

Since Proposition 9 specifically excludes heirs mentioned in a will, then it is my belief that the situation involving my wife is similar and like an heir named in a will it is unnecessary for her interest to be disclosed.

As I stated earlier, I would be most happy and have in the past disclosed all financial interest that I or any of my family has a real ownership. However, that is not the circumstance in the case regarding the Revocable Trust in which my wife is named a beneficiary. I, therefore, request that you re-examine your reasons for requesting such a disclosure.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "John Garamendi". The signature is written over the typed name and extends upwards and to the left.

JOHN GARAMENDI

JG/py