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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	• • •	Conflict of Interest
(916) 322-5660		322-5901		322-6441		322-6444

February 15, 1978

78-02-093

Honorable Zook Sutton
 Superior Court
 County of Alameda
 Department 36
 Hall of Justice
 24405 Amador Street
 Hayward, CA 94544

Dear Judge Sutton:

Thank you for your letter of January 18, 1978, requesting advice, under Government Code Section 83114(b), on whether certain interests in two different trusts should be reported. I will address the trusts separately.

Under the first trust, which was established upon your stepgrandfather's death, you and your sister had a residual interest. Your stepgrandfather's wife, who was not related to you or your sister, had a life estate under that trust. When your stepgrandfather's wife died in December of 1977, the trust was terminated and the corpus was distributed to you and your sister.

The trustee, who was related to your stepgrandfather by marriage but who is unrelated to you, and your sister's husband, your brother-in-law, performed services to terminate the trust. The trustee and your brother-in-law waived any fees for their services in terminating the trust. You have asked whether the value of their services in terminating the trust has to be reported.

The Political Reform Act ("Act") requires, among other things, the reporting of income of \$250 or more and gifts of \$25 or more. (Government Code Section 87207(a)(1).)^{1/} Income includes the pro rata share of the income of a trust

^{1/} All further statutory references are to the Government Code unless otherwise noted.

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Honorable Zook Sutton
February 15, 1978
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in which the individual owns a 10 percent interest or greater. (Section 82030(a).) Since you and your sister had the remainder interest, you had a 50 percent interest in the trust. Therefore you will have to report 50 percent, your pro rata share, of the income to the trust.

Income includes gifts which are defined as "any payment to the extent that consideration of equal or greater value is not received...." (Section 82028.) A payment includes "services or anything else of value, whether tangible or intangible." (Section 82044.) The value of the trustee's and your brother-in-law's services in terminating the trust will be a gift to the trust.

However, you will only have to report 50 percent of the value of the trustee's services, if \$50 or more, as a gift to the trust. The gift of your brother-in-law's services to the trust will not have to be reported since the Act specifically excludes gifts from certain relatives, including a brother-in-law. (Section 82030(b)(5).)

Under the second trust, which was established upon your grandmother's death, you and your sister have a residual interest. Your aunt has a life estate under that trust. The trust holds some mineral rights in northern California. You have asked whether these mineral rights should be reported as an interest in real property and if so, what is the value of that interest.

Section 87206 requires the disclosure of an interest in real property, which includes the pro rata share of interests in real property of a trust in which you have a 10 percent or greater interest, if the value of that pro rata share is \$1,000 or more and the real property is located within the jurisdiction.^{2/} Assuming the terms of the trust did not give your aunt a power of appointment or an unlimited right to invade the trust's principal then you and your sister have an irrevocable right to the residual interest of the trust. You have a 50 percent interest in your grandmother's trust and will have to report any interest in real property of the trust for which the pro rata share is \$2,000 or more. Section 87206(a) and (c) requires that when an interest in

^{2/} For a judge, the jurisdiction is the state.

real property is required to be disclosed, the nature of the interest and the address or other precise location of the real property must be reported. Any reasonable means of identifying the location of the property is acceptable, including the parcel number.

Mineral rights are reportable as an interest in real property, since they are an ownership interest. Thus if the value of the mineral rights is \$2,000 or more, you will have to report them. In determining the value of the mineral rights, a good faith estimate is sufficient.^{3/} As the Fair Political Practices Commission stated in the Opinion Requested by Kenneth Cory, 1 FPPC Opinions 153 (No. 75-094-B, Oct. 23, 1975):

Section 81004 requires all statements filed under the Political Reform Act to be verified and, further, requires the verification to state that the filer has used all reasonable diligence in its preparation and that, to the best of the filer's knowledge, the statement is true and complete. A good faith effort by the [filer] ... constitutes reasonable diligence as required by statute. There is no need to retain a professional appraiser.

1 FPPC Opinions at 155

I hope this information is helpful to you. If you have any questions, please feel free to contact me.

Sincerely,

Barbara Campbell
Barbara Campbell
Counsel
Legal Division

BC:plh

^{3/} In your letter and in our telephone conversation of February 3, 1978, you stated the tax on the mineral rights has been rising over the past years and is now approximately \$500 per year. The tax may provide an indication of the fair market value of the mineral rights. However in this situation you said that the trustee had received an opinion that the value of the mineral rights is nominal. Because of the differing opinions on the value of the mineral rights, it will be up to you to make a good faith estimate of the value.

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SUPERIOR COURT
STATE OF CALIFORNIA
COUNTY OF ALAMEDA
COURT HOUSE - OAKLAND 94612

ZOOK SUTTON
JUDGE

REPLY TO:
DEPARTMENT 36
HALL OF JUSTICE
24405 AMADOR STREET
HAYWARD, CALIFORNIA 94544
(415) 881-6142

January 18, 1978

Mr. Robert M. Stern
General Counsel
Fair Political Practices Commission
P. O. Box 807
Sacramento, Ca. 95804

Dear Mr. Stern:

This letter is written pursuant to Government Code Section 83114(b) and I hereby seek your advice concerning the following:

1. My stepgrandfather died about 1971. He left a life estate to his wife and the residuary to my sister and me.

His wife, who was not related to my sister and me, died December of 1977, and the trust was terminated and distributed to my sister and me.

The trustee designated by my stepgrandfather was related to him by marriage and throughout the period of the trust waived his fees as trustee.

Should the value of his fees in terminating the trust be reported?

My sister's husband is an attorney and performed services in assisting the trustee in terminating the trust. He, also, waived any fees.

Should the value of his services be reported?

2. In 1960 my grandmother died and left a trust for her daughter, my aunt who is still alive. My sister and I are residual beneficiaries. Shortly after my grandmother's death the estate sold several parcels of real property in Northern California, reserving the mineral rights.

The trustee has investigated the value of these mineral rights and has determined that they have no value. For many years the county assessor taxed the mineral rights of this property to

the estate at nominal value. However, in the past year the total tax has been increased to approximately \$500 per year.

Should this interest in real property be reported? If so, what value should be assigned?

Your assistance is greatly appreciated.

Very truly yours,


ZOOK SUTTON