

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

April 26, 1984

William A. Richmond
District Attorney
Tulare County Courthouse
202 County Civic Center
Visalia, CA 93291

Re: Advice Letter No. A-84-067

Dear Mr. Richmond:

This letter is to confirm our telephone conversation concerning the disclosure requirements of the Political Reform Act.

FACTS

Your wife's mother is the income beneficiary and trustee of a trust. She has the power to invade the principle of the trust for the benefit of herself, or of any of the remaindermen. Your wife and her two brothers are the remaindermen.

QUESTION PRESENTED

Do you have any reporting responsibility regarding the trust?

CONCLUSION

You do not have to report the trust or its contents on your Statement of Economic Interest.

DISCUSSION

In completing a Statement of Economic Interests, 2 Cal. Adm. Code Section 18234 provides that a filer must report his pro rata share of the interests in real property, sources of income and investments held by a trust in which the filer has a

direct, indirect, or beneficial interest of 10% or more.^{1/} A filer's interests include an interest in a trust held by the filer's spouse. A filer has a "direct, indirect, or beneficial interest" in the trust if the filer (or his spouse) is:

* * *

(2) A beneficiary and:

(A) Presently receives income; or

(B) Has an irrevocable future right to receive income or principal.... [A]n individual has an irrevocable future right to receive income or principal if the trust is irrevocable and:

(I) No powers exist to consume, invade or appoint the principal for the benefit of beneficiaries other than the filer or if there are such powers they are limited by an ascertainable standard relating to the health, education, support or maintenance of said beneficiaries....

2 Cal. Adm. Code Section
18234.

Your wife's interest in the trust does not result in your having a reportable interest. Although she is a beneficiary, she does not presently receive income, nor does she have an "irrevocable future right to receive income or principle" within the meaning of 2 Cal. Adm. Code Section 18234 because her mother has an unrestricted right to consume the principle for her own benefit.

^{1/} This disclosure will vary depending upon the filer's disclosure category. You are an Article II filer and you have full disclosure.

William A. Richmond
April 26, 1984
Page 3

If I can be of any help to you in the future, please feel free to contact me at (916) 322-5901.

Very truly yours,

Janis Shank McLean

Janis Shank McLean
Counsel
Legal Division

JSM:plh



William A. Richmond
District Attorney
and Public Administrator

Tulare County Courthouse
202 County Civic Center
Visalia, California 93291
(209) 733-6411

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March 23, 1984

Janis McLean
Office of General Counsel, F.P.P.C.
P.O. Box 807
Sacramento, California 95804

Re: Informal Opinion

Dear Mrs. McLean:

This is a request for an informal opinion of whether or not Schedule C of Form 721 calls for entries under the following circumstances:


My wife and her two brothers are remainder beneficiaries of an existing testamentary trust. Her mother is the income beneficiary and trustee. The trustee has the power to invade the principle of the trust, to apply it to the benefit of the income beneficiary or any of the remaindermen.

Pursuant to our telephone conversation today, I understand this is not a reportable interest, because it is not irrevocable under the applicable Regulations. Further, there is a question of whether or not my wife's interest amounts to ten percent or more.

I would appreciate your written response confirming or correcting this understanding.

Thank you for your assistance.

With kind personal regards,


William A. Richmond
District Attorney

WAR/dlp

Janis McLean
March 23, 1984
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P.S. Subsequent to our conversation, I have been reminded that my wife and I are trustees of education trusts for our four children. These trusts are not large, but include common stock ~~and~~ Standard Oil of California and Chrysler Corporation, whom I suppose are considered to be doing business in Tulare County. The principle of these trusts may be, in fact is intended to be, invaded for the benefit of the beneficiaries. The question, again, is whether these are reportable interests under Schedule C of Form 721.

There is no question that my children's' interest exceeds ten percent, as they are both income and remainder beneficiaries. The issue would appear to be whether their interest is considered irrevocable.

A handwritten signature in black ink, appearing to be 'JAL', located in the lower right quadrant of the page.

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QUESTION PRESENTED

Do you have any reporting responsibility regarding the trust?

CONCLUSION

You do not have to report the trust or its contents on your Statement of Economic Interest.

DISCUSSION

In completing a Statement of Economic Interests, 2 Cal. Adm. Code Section 18234 provides that a filer must report his pro rata share of the interests in real property, sources of income and investments held by a trust in which the filer has a

direct, indirect, or beneficial interest of 10% or more.^{1/} A filer's interests include an interest in a trust held by the filer's spouse. A filer has a "direct, indirect, or beneficial interest" in the trust if the filer (or his spouse) is:

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Dear Mrs. McLean:

This is a request for an informal opinion of whether or not Schedule C of Form 721 calls for entries under the following circumstances:

My wife and her two brothers are remainder beneficiaries of an existing testamentary trust. Her mother is the income beneficiary and trustee. The trustee has the power to invade the principle of the trust, to apply it to the benefit of the income beneficiary or any of the remaindermen.

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