



California Fair Political Practices Commission

May 26, 1987

William H. Davidge
543 Fifth Street
Solvang, CA 93463

Re: Your Request for Advice
Our File No. A-87-135

Dear Mr. Davidge:

You have requested advice concerning your disclosure responsibilities under the conflict of interest provisions of the Political Reform Act (the "Act").^{1/} Although you have written two letters which have different questions about your reporting requirements, the central concern of both letters is how to treat your interest in a trust for purposes of disclosure under the Act. Therefore, our response to your separate requests for advice are consolidated in this letter.

QUESTIONS

1. What are the reporting requirements for income from rental property held by a trust for which the filer is the sole beneficiary?

2. Should the filer report the real property interest of a trust when the filer is the sole beneficiary of the trust and the filer resides on the property held by the trust?

3. Does the filer have any disclosure requirements if a trust for which the filer is the sole beneficiary obtains a loan secured by real property held by the trust if that property is used as the residence of the filer?

CONCLUSIONS

1. Rental income from real property held by a trust for which the filer is the sole beneficiary is reportable as income on a filer's statement of economic interests if the filer's pro rata share of the income amounts to \$250 or more during the reporting period.

^{1/}Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, *et seq.* All references to regulations are to Title 2, Division 6 of the California Administrative Code unless otherwise indicated.

2. Property used exclusively as the filer's principal place of residence, even if the property is held by a trust, does not have to be disclosed on the filer's statement of economic interests.

3. A loan obtained by a trust for which the filer is the sole beneficiary must be disclosed unless the loan is obtained from a commercial lending institution in the regular course of its business on terms available to members of the public without regard to official status, and (1) the loan is used to purchase, refinance the purchase or make improvements to the filer's principal place of residence or (2) the balance of the loan does not exceed \$10,000 during the reporting period.

FACTS

Your letters state that you are the sole beneficiary of a trust which holds real property.^{2/} One piece of property held by the trust is used by you for your residence. You have asked whether a loan obtained by the trust and secured by the property which you use as your residence must be reported. Furthermore, you want to know about the reporting requirements for rental income of more than \$10,000 which has been received by the trust from a source in your jurisdiction.

Although you do not indicate what position you hold which requires a statement of economic interests to be filed, your letters indicate that the questions are regarding Form 721. Therefore, we assume that you hold an office enumerated in Section 87200, and that you must fulfill the reporting requirements outlined in Sections 87203, 87206 and 87207.

ANALYSIS

The central issue raised in your letters is the disclosure requirements of a filer when assets are held by and income is received by a trust for which the filer is the sole beneficiary. Trusts are included in the Act's disclosure requirements, and with some exceptions (which are noted below), must be treated the same as reportable interests in income, real property and investments which are held directly by the filer. However, because there are a variety of trusts, the Commission has adopted a regulation which provides guidance in determining whether or not a particular trust must be reported on a filer's statement of economic interests. (Regulation 18234.)

^{2/}We assume that there is only one trust involved in your inquires. If that assumption is incorrect, please feel free to contact us with additional facts.

Generally a filer is required to disclose interests in a trust in which he or she "...has a direct, indirect or beneficial interest of 10 percent or greater." (Regulation 18234(a).) The beneficiary of a trust has such an interest if he or she presently receives income or has an irrevocable future right to receive income or principal from the trust. (Regulation 18234(c)(2)(A), (B).) A beneficiary who meets this test must report interests in real property, sources of income and investments of the trust. (Regulation 18234(a).) Of course, only interests the Act requires an individual to disclose are reportable, whether held by a trust or held directly by an individual.

As regards your specific questions, the following answers assume that the trust meets the disclosure standards outlined in Regulation 18234:

1. Rental income received by the trust from a source in your jurisdiction is reportable on your statement of economic interests if the amount of income is \$250 or more during the reporting period. You should disclose the income on Schedule D of Form 721, indicate that the trust is the source of the income and that the consideration was for property rental. Because the trust received rental income of \$10,000 or more from a single source, the name of that source must be reported on Schedule H-3 of Form 721. The rental property held by the trust should be identified on Schedule C-1 of Form 721.

2. The filer's personal residence or any other property which is used exclusively as the personal residence of the filer is not required to be disclosed on his or her statement of economic interests. (Section 87206(f).) Therefore, if you are using the trust's real property exclusively as your personal residence, then you do not have to report the property on your Form 721. If a portion of the real property held by the trust is used for purposes other than for your place of residence (or if there is other property held by the trust which is not used exclusively for your residence), then that portion or other property must be disclosed on your statement of economic interests on Schedule C-1.

3. Your third question concerns the situation in which the trust takes out a loan using as security for the loan the real property which you use as your place of residence. The loan would be reportable by you on Schedule E of Form 721, unless it qualifies for exclusion from the income reporting requirements because it meets one or more of the following conditions:

(8) Any loan or loans from a commercial lending institution which are made in the lender's regular course of business on terms available to members of the public without regard to official status if:

(A) Used to purchase, refinance the purchase of, or for improvements to, the principal residence of filer; or

(B) The balance owed does not exceed ten thousand dollars (\$10,000).

(9) Any loan from an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, uncle, aunt, or first cousin, or the spouse of any such person, provided that a loan from any such person shall be considered income if the lender is acting as an agent or intermediary for any person not covered by this paragraph.

(Section 82030(b)(8),(9).)

We cannot advise you in any more detail what your filing requirements are because we have not been provided with information of the details of the loan transaction being contemplated. If you need forms to amend previous filings, or you need further information about your filing requirements, please contact at me (916) 322-5662.

Sincerely,

Diane M. Griffiths
General Counsel

By: Bruce W. Robeck
Political Reform Consultant

DMG:BWR:kmt

William H. Davidge
543 Fifth Street
Solvang, CA 93463

F P P C

APR 22 10 29 AM '87

April 19, 1987

FAIR POLITICAL PRACTICES COMMISSION
P.O. Box 807
Sacramento, CA 95804-0807

RE: Form 721

Subject: Reporting of Interest in Residence

Dear Sir or Madam:

I am the sole beneficiary of a grantor type trust which holds title to a piece of property. I make my residence on that piece of property. Should my interest in this piece of property be reported? If so, which schedule or schedules should be used. Also, if the trust were to put a loan on said property, would I be required to report that loan, and if so, which schedule or schedules should be used?

Sincerely,



William H. Davidge

WHD:ged

William H. Davidge
543 Fifth Street
Solvang, CA 93463

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APR 22 10 29 AM '87
April 19, 1987
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6-2-87-10

FAIR POLITICAL PRACTICES COMMISSION
P.O. Box 807
Sacramento, CA 95804-0807

RE: Form 721

Subject: Reporting of Trust Rental Income

Dear Sir or Madam:

I am the sole beneficiary of a trust which receives rental income (from a source within my jurisdiction) amounting to more than \$10,000.00. I intend to report that income on Schedule H-3. Is this the correct place to report such income? If this is not the appropriate schedule, where, if at all, should it be reported?

Sincerely,


William H. Davidge

WHD:ged



California Fair Political Practices Commission

May 12, 1987

William H. Davidge
543 Fifth Street
Solvang, CA 93463

Re: 87-135

Dear Mr. Davidge:

Your letter requesting advice under the Political Reform Act was received on May 5, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5662.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).) You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script that reads "Jeanne Pritchard".

Jeanne Pritchard
Chief
Technical Assistance and Analysis
Division

JP:plh