



# California Fair Political Practices Commission

March 8, 1988

William H. Davidge  
543 Fifth Street  
Solvang, CA 93463

Re: Your Request for Advice  
Our File No. A-88-022

Dear Mr. Davidge:

You have requested advice concerning your disclosure responsibilities under the conflict of interest provisions of the Political Reform Act (the "Act").<sup>1/</sup>

## QUESTIONS

1. Is income received directly by you from a trust reportable on your statement of economic interests?
2. Is income received by a trust in which you have a 10 percent or greater interest reportable as income by you on your statement of economic interests?
3. Is income from securities transactions conducted by your trust reportable on your statement of economic interests? If yes, who is reported as the source of the income?
4. Is a loan against trust property which you use exclusively as your principal place of residence reportable on your statement of economic interests?

## CONCLUSIONS

1. Payments which you receive directly from the trust are income to you and must be reported on your statement of economic interests if the income totals \$250 or more in a calendar year.

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<sup>1/</sup>Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

2. You must report your pro rata share of income received by the trust, even if you do not actually receive the income. In addition, you must disclose any source of income to the trust if your pro rata share of the gross income received by the trust from a single source is \$10,000 or more.

3. Income from the sale of securities on an exchange or market are not reportable as income unless you know or have reason to know who the buyer is.

4. A loan received by the trust from a commercial lending institution in the regular course of business for property which is used exclusively as your principal residence is not reportable.

#### FACTS

You are a planning commissioner who is required to file an annual statement of economic interests. Most of your investments and real property are held by a trust in which you have a 10 percent or greater interest. You are a maker of the trust and currently receive income from the trust directly and indirectly.

Part of the real property transferred to the trust is a house used exclusively as your principal place of residence. Prior to your acquisition of the house and prior to purchase of the residence by your trust, the property carried a deed of trust of more than \$10,000 in which a financial institution retained the beneficial interest. The interest in the loan has been acquired by another financial institution but is still an indebtedness owed by your trust.

#### ANALYSIS

All of the questions you have asked involve the reporting of income received by a trust or the holdings of the trust. Therefore, before addressing your specific questions, I will explain in general how trusts should be treated for reporting purposes under the Act.

In general, a filer must report his or her pro rata share of the investments and interests in real property and income of any trust in which the filer has a direct, indirect or beneficial interest of 10 percent or greater, if the investments, real property or income would be reportable if the filer held or received them directly. (Regulation 18234, copy enclosed.) However, investments, real property and income through a trust are reported differently than investments, real property and income held or received directly by the filer.

The following summary will answer your specific questions and advise you how to use the forms to disclose your economic interests.

1. Income of \$250 or more in a calendar year which you receive directly from the trust is reportable on your statement of economic interests. (Section 82030(a).) This income is reported on Schedule D of the Form 721, and the trust should be shown as the "source" of the income.

2. Your pro rata share of income received by the trust is also required to be reported by you, even if you do not actually receive the income.

"Income of an individual also includes a pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10 percent interest or greater."

(Section 82030(a), emphasis added.)

The income received by the trust must be reported by you on Schedule D of Form 721. Because you receive both direct and indirect income from the trust, the two types of income may be aggregated for disclosure purposes. Therefore, only one entry may be shown and the trust should be listed as the source of the income.

As explained above, you must report any source of income to the trust if your pro rata share of the income from any one source is \$10,000 or more in a calendar year. However, you are not required to report any source of income which is:

outside the jurisdiction and not doing business within the jurisdiction, not planning to do business within the jurisdiction, or not having done business within the jurisdiction during the two years prior to the time any statement is required.

(Section 82030(a).)

Sources of income to the trust are reported on Schedule H-2 of the Form 721.

3. Income from the sale of a security which is registered with the Securities and Exchange Commission of the United States Government and is sold on a stock exchange is not reportable if the filer does not know or have reason to know who the purchaser is. (Section 82030(b)(12).) When a security is disposed of by a means other than being sold on an open, recognized stock exchange, then you must report the gross income from the sale as part of your gross income from the trust. If your pro rata share of the

William H. Davidge  
Page Four

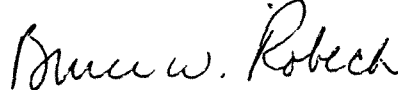
gross payment received from the buyer is \$10,000 or more, then the name of the buyer must be reported on Schedule H-2. If the buyer is unknown, but the sale was not on a regular securities exchange, then show "unknown" as the source of the income.

4. A loan from a commercial lending institution in the regular course of business on real property which you use exclusively as your principal place of residence is not reportable on your statement of economic interests. (Section 82030(b)(8).) Even though the beneficial interest in the deed of trust which secures the loan has been assigned to another financial institution, the loan is from a commercial lending institution and is not reportable as long as the loan was obtained in the regular course of business on terms available to the public without regard to official status. (Section 82030(b)(8)(A).)

If you have any questions regarding this advice, please call me at (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

January 3, 1988

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

Attention: Bruce Robeck  
Political Reform Consultant

RE: Form 721  
Your File No. A-87-135

Subject: Reporting Trust Income

Dear Mr. Robeck:

As I attempt to properly complete form 721 as a city planning commissioner, and in reviewing your letter of May 26, 1987, a few questions come to my mind. So that you can have additional facts in order that you can more easily give me correct advice, I have enclosed a copy of the William H. Davidge Trust date 7/31/78 which is the trust I refer to in this letter.

Other than interests I have in retirement plans, all my assets are owned by the trust.

The following are items which I would like clarified:

1. Am I correct in understanding that income received by me from the trust must be reported on Schedule D and that income received by the trust must also be reported on Schedule D (as opposed to reporting the trust's income on Schedule H-2)?
2. With respect to security transactions conducted by the trust, I am planning on reporting the positions held, acquired and disposed of on Schedule C-2. This question is related to question #1 above. Assuming the income from the sale of the securities is to be reported on Schedule D, I see in the instructions for said schedule that "Proceeds from the sale of securities...sold on a stock...exchange" are not required to be reported, "if the purchaser is not known". What is the definition of "exchange"? What exchanges to you accept? Is the "over the counter" market an "exchange"?

3. Most of the securities owned by the trust are purchased on a totally discretionary basis by a registered investment advisor, through dealers, and held in a custodial account at Wells Fargo Bank in Los Angeles. If the income to the trust from the sale of securities is to be reported on Schedule D, then is the source of the income the investment advisor, Wells Fargo Bank, the dealer who may have acted either as a principal or as an agent, or the person to whom the dealer sold the security if the dealer was acting as an agent (this latter information may be very difficult to get)?
4. If the source of the income in Question #3 is the registered investment advisor, Wells Fargo Bank, or a dealer who does not have an office in my jurisdiction, then can I consider the source not doing business in the jurisdiction even though the trust has an account with source? If both of these are true, then is the income from this source exempt from disclosure?
5. The trust purchased my primary residence prior to my taking office. In that transaction, the trust bought the property subject to a deed of trust to Trans Mortgage Company, a California Corporation. The beneficial interest under this deed of trust was assigned, by mesne assignments of record, to Equitable Mortgage Resources Inc. from Florida. The balance is more than \$10,000. Do you consider this loan to be from a "Commercial Lending Institution" or do you consider I got the loan from the seller of the property? Should I report this loan on Schedule E? If so, how?

Your attention to these questions will be appreciated. If you need further clarification on any matter, please let me know and I will try to supply the information.

Sincerely,



William H. Davidge

WHD:ged

DECLARATION OF TRUST

WILLIAM H. DAVIDGE, called the "Settlor" or the "Trustee", depending on the context, declares that he has set aside and holds in trust the property described in Schedule "A", attached to this instrument.

ARTICLE I

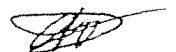
Property subject to this instrument is referred to as the Trust Estate and shall be held, administered and distributed in accordance with this instrument.

ARTICLE II

The Trustee shall pay to or apply for the benefit of the Settlor the net income of the Trust Estate in quarter annual or more frequent installments. If the Trustee considers the net income insufficient, the Trustee shall pay to or apply for the benefit of the Settlor as much of the principal of the Trust Estate as is necessary or desirable in the Trustee's discretion for the Settlor's health, support, comfort, enjoyment and welfare.

ARTICLE III

A. On the death of the Settlor, the Trustee shall, pay out of the Trust Estate, debts of the Settlor, the estate



and inheritance taxes, including interest and penalties, arising because of the Settlor's death, the last illness and funeral expenses of the Settlor, attorneys' fees and other costs incurred in administering the Settlor's probate estate.

Any payments for estate and inheritance taxes shall be charged and apportioned in accordance with the provisions of Schedule B attached hereto and incorporated herein by this reference.

B. On the death of the Settlor, the Trustee shall hold, administer and distribute the Trust Estate in accordance with the provisions set forth on Schedule B attached hereto and incorporated herein by this reference.

C. If any beneficiary entitled, under this Article III, to outright distribution of a portion of the Trust Estate is under age twenty-one (21), the Trustee shall hold and administer that beneficiary's share of the Trust Estate for the beneficiary's benefit. Income of such share shall be added to principal and the Trustee shall pay to or apply for the benefit of the beneficiary as much of the beneficiary's share as the Trustee, in the Trustee's discretion, considers necessary for the beneficiary's proper health, education, support and maintenance. When the beneficiary shall have attained the

age of twenty-one (21) years, the Trustee shall distribute to the beneficiary, his or her entire share of the Trust Estate. If any beneficiary dies before attaining age twenty-one (21), the deceased beneficiary's share of the Trust Estate shall be distributed, subject to the provisions of this paragraph C, to his or her issue, or, if there are none, to the Settlor's then living brothers or sisters or to their issue, by right of representation.

#### ARTICLE IV

If at any time before full distribution of the Trust Estate the Settlor and all the Settlor's siblings and their issue are deceased and no other disposition of the property is directed by this instrument, the remaining portion of the Trust shall then be distributed to the legal heirs of the Settlor, the identity and respective shares of those heirs to be determined in all respects as though the death of the Settlor had occurred immediately following the event requiring distribution. Distribution shall be determined according to the laws of succession of the State of California then in force relating to separate property not acquired from a parent, grandparent or previously deceased spouse.

#### ARTICLE V

A. During the lifetime of the Settlor this Trust may be revoked in whole or in part by the Settlor. On revocation, the Trustee shall promptly deliver to the Settlor all the property



constituting the Trust Estate, including all accrued or undistributed income.

E. The Settlor may at any time during his lifetime amend any of the terms of this instrument by an instrument in writing signed by the Settlor and delivered to the Trustee.

#### ARTICLE VI

In order to carry out the provisions of the Trust created by this instrument, Trustee shall have these powers in addition to those now or hereafter conferred by law:

A. To invest and reinvest funds in every kind of property, real, personal, or mixed, and every kind of investment, specifically including, but not limited to, corporate obligations of every kind, stocks, preferred or common, shares of investment trusts, investment companies, and mutual funds, and mortgage participations, and life insurance policies on the life of any beneficiary that men of prudence, discretion, and intelligence acquire for their own account.

B. To continue to hold any property, including non-productive property, and to operate at the risk of the Trust Estate any business that the Trustee receives or acquires under the Trust as long as the Trustee deems advisable.

C. To have all the rights, powers, privileges of an owner with respect to securities held in trust, including but not limited to the powers to vote, give proxies and pay assessments; to participate in voting trusts, pooling agreements, foreclosures,

reorganizations, consolidations, mergers and liquidations and, incident to such participation, to deposit securities with and transfer title to any protective or other committee on such terms as the Trustee may deem advisable; and to exercise or sell stock subscriptions or conversion rights.

D. To manage, control or grant options on, sell for cash or on deferred payments, convey, exchange, partition, divide, improve and repair trust property.

E. To hold securities or other property in its own name or in the name of its nominee, without disclosing any fiduciary relation, including maintenance of one or more "street name" accounts with brokers.

F. To buy and sell listed and unlisted options and/or sell covered or backed or uncovered or unbacked options and re-purchase same.

G. To buy, sell and trade in securities of any nature (including "short" sales) on margin, and to buy, sell and trade in commodities, and for such purposes to maintain and operate margin accounts and other accounts with brokers, and to pledge all securities held or purchased, with such brokers as security for loans and advances made to the Trustee.

H. To lease trust property for terms within or beyond the terms of the Trust for any purpose, including exploration

for and removal of gas, oil and other minerals; and to enter into community oil leases, pooling and unitization agreements.

I. To borrow money and to encumber trust property by mortgage, deed of trust, pledge or otherwise for the debts of the trust or a co-owner of trust property.

J. To commence or defend, at the expense of the Trust, such litigation with respect to the Trust or any property of the Trust Estate as the Trustee may deem advisable and to compromise or otherwise adjust any claims or litigation against or in favor of the Trust.

K. To carry insurance of such kinds and in such amounts as the Trustee deems advisable at the expense of the Trust to protect the Trust Estate and the Trustee personally against any hazard.

L. To partition, allot and distribute the Trust Estate on any division or partial or final distribution of the Trust Estate, in undivided interests or in kind, or partly in money and partly in kind, at valuations determined by the

Trustee, and to sell such property as the Trustee may deem necessary to make division or distribution. In making any division or partial or final distribution of the Trust Estate, the Trustee shall be under no obligation to make a prorata division or to distribute the same assets to beneficiaries similarly situated; but rather, the Trustee may, in the Trustee's discretion, make a non-prorata division between trusts or shares and non-prorata distributions to such beneficiaries, as long as the respective assets allocated to separate trusts or shares, or distributed to such beneficiaries, have equivalent or proportionate fair market value.

#### ARTICLE VII

There need be no physical segregation or division of any of the various trusts established herein except as segregation or division may be required by the termination of any of the trusts; but the Trustee shall keep separate accounts for the different undivided interests.

#### ARTICLE VIII

Other property acceptable to the Trustee may be added to this Trust by any person, by the Will or Codicil of the Settlor,

or by the proceeds of any life insurance or otherwise.

ARTICLE XI

A. Unless sooner terminated in accordance with the other provisions of this instrument, all trusts created under this instrument shall terminate twenty-one (21) years after the death of the last survivor of the Settlor's issue, the Settlor's brothers and sisters and the issue of the Settlor's brothers and sisters living on the date of the death of the Settlor. Principal and undistributed income of a terminated trust shall be distributed to the then income beneficiaries of that trust in the same proportion that the beneficiaries are entitled to receive income when the trust terminates. If at the time of such termination, the rights to income are not fixed by the terms of the Trust, distribution under this clause shall be made by right of representation to the persons who are entitled or authorized in the Trustee's discretion to receive Trust payments.

B. No interest in the principal or income of any trust created under this instrument shall be anticipated, assigned, encumbered or subjected to creditor's claims, or legal process before actual receipt by the beneficiary.

C. The validity of this Trust and the construction of its beneficial provisions shall be governed by the laws of the State of California in force from time to time. This paragraph shall apply

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SANTA BARBARA, CALIF.

regardless of any changes of residence of the Trustee or any beneficiary, or the appointment or substitution of a Trustee residing or doing business in another state.

D. In this instrument the term "issue" shall refer to lineal descendants of all degrees and shall include adopted persons.

E. The Trustee is authorized to abandon any property or interest in property belonging to the Trust when, in the Trustee's discretion, such abandonment is in the best interest of the Trust and its beneficiaries.

F. As used in this instrument, the masculine, feminine or neuter gender and the singular or plural number shall each include the others whenever the context so indicates.

G. If any provision of this Trust instrument is unenforceable, the remaining provisions shall nevertheless be carried into effect.

#### ARTICLE X

If WILLIAM H. DAVIDGE shall, for any reason, fail to qualify or cease to act as Trustee, then DEAN G. DAVIDGE shall act as Trustee. If DEAN G. DAVIDGE shall, for any reason, fail to qualify or cease to act as Trustee, then SUSAN B. DAVIDGE, shall act as Trustee.

ARTICLE XI

No bond shall be required of any person named in this instrument as Trustee for the faithful performance of his duties as Trustee.

ARTICLE XII

The Trust created in this instrument may be referred to as the WILLIAM H. DAVIDGE TRUST.

Executed at Santa Barbara, California, on the 31<sup>st</sup> day of July, 1978.

  
\_\_\_\_\_  
WILLIAM H. DAVIDGE, Trustee

I certify that I have read and approve the foregoing Declaration of Trust and that it correctly states the terms and conditions under which the Trust Estate is to be held, managed and disposed of by the Trustee.

DATED: July 31, 1978

  
\_\_\_\_\_  
WILLIAM H. DAVIDGE, Settlor

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# California Fair Political Practices Commission

January 8, 1988

William H. Davidge  
543 Fifth Street  
Solvang, CA 93463

Re: 88-022

Dear Mr. Davidge:

Your letter requesting advice under the Political Reform Act was received on January 8, 1988 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 more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to the information needed. 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,

*Jeanne Pritchard*

Jeanne Pritchard *by JP*  
Chief  
Technical Assistance and Analysis  
Division

JP:jaj