



# California Fair Political Practices Commission

June 8, 1988

Honorable John K. Van de Kamp  
Attorney General  
1515 K Street, Suite 600  
P.O. Box 944244  
Sacramento, CA 94244-2550

Re: Your Request for Advice  
Our File No. A-88-169

Dear Attorney General Van de Kamp:

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

## QUESTION

You have a remainder interest in two trusts, one of which was established by Mr. Walter Van de Kamp and the other by Mr. Harry Van de Kamp.

For purposes of the Act, do you have an irrevocable future right to receive income or principal from the trusts which requires you to disclose your pro-rata share of interests held by the trusts?

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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.

CONCLUSION

You have an irrevocable right to receive principal or income from only one of the trusts, the trust established by Mr. Harry Van de Kamp.

You do not have an irrevocable right to receive principal or income from the trust established by Mr. Walter Van de Kamp because that trust gives the trustee unlimited power to invade the principal for the benefit of beneficiaries other than you. Therefore, you are not required to disclose any interest you have in that trust.

Your right to receive principal or income from the trust established by Mr. Harry Van de Kamp is irrevocable because the trustee does not have unlimited powers to invade the principal for other beneficiaries, and no one can change the beneficiaries of the trust. Accordingly, you are required to disclose your pro-rata share of any sources of income to the trust and any real property or investments held by the trust.

FACTS

You are a beneficiary of a remainder interest in two trusts. Specifically, you have a one-third remainder interest in a trust established by Mr. Walter Van de Kamp ("trust 1") and a one-half remainder interest in a trust established by Mr. Harry Van de Kamp ("trust 2"). Your remainder interest in each trust exceeds 10 percent.

Trust 1 was established for the support of Mr. Walter Van de Kamp's surviving widow and sister. No amounts are payable to you until after the death of the primary beneficiaries. The trust provides that your interest is limited to one-third of whatever principal remains, not to exceed \$250,000.

Trust 2 was established primarily for the support of Mr. Harry Van de Kamp's surviving widow. No amounts are payable to you until after the death of the primary beneficiary. Your interest is limited to one-half of whatever principal remains.

Both trusts are irrevocable. Currently, you receive no income from either trust. Only upon the death of the primary beneficiaries may you exercise your future right to receive principal or income, providing there is still property in the trusts.

Both trusts give the trustee discretion to invade the principal for the proper maintenance and support of the primary beneficiaries. Trust 1 specifically permits the trustee to invade the principal for the decedent's wife and sister "as the trustee in the trustee's discretion, deems necessary for their respective proper support, care and maintenance."

In trust 2, the decedent directed the trustee to distribute as much of the trust principal as the trustee determines to be appropriate to provide for the proper health, maintenance and support of the decedent's spouse "in a manner consistent with the standard of living of my spouse at my death."

In both trusts, the trustee has discretion to allocate the trust assets among the beneficiaries and to make a non pro-rata division of assets among the beneficiaries, so long as each beneficiary receives his or her respective fair market value share of the total assets of the trust.

#### ANALYSIS

The Act requires every public official to disclose all his or her economic interests which the official could foreseeably affect by the exercise of his or her official duties. (Sections 81002(c), 87200-87313.) As Attorney General, you are required to disclose, among other things, all your investments and interests in real property valued at \$1,000 or more and all your sources of income totaling \$250 or more. (Sections 87200, 87206 and 87207.)<sup>2/</sup> For purposes of the Act, your "investments" include a pro-rata share of investments of any business entity or trust in which you own a 10-percent or greater interest. (Section 82034.)

Your interest in both trusts exceeds 10 percent. However, Regulation 18234 limits the circumstances under which a beneficiary of a trust with a 10-percent or greater interest must disclose his or her pro-rata share of the trust assets or income. Under Regulation 18234, there are two conditions which require the beneficiary to disclose: (1) The beneficiary presently receives income, or (2) The beneficiary has an irrevocable future right to receive income or principal.

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<sup>2/</sup> Your responsibility to disclose sources of income and investment interests is limited to those persons or entities which have an interest in real property in California, do business or plan to do business in California, or have done business in California during the previous two years. (Sections 82030, 82034 and 82035.) Your responsibility to disclose real property interests is limited to real property interests located in California. (Sections 82033 and 82035.)

You do not presently receive income from the trusts. Therefore, we must determine whether you have an irrevocable future right to receive income or principal from the trusts.

Regulation 18234 (c)(2)(B) provides that a beneficiary of an irrevocable trust has an irrevocable future right to receive income or principal from the trust if:

1. 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; or

2. Under the terms of the trust, no one else can designate the persons who shall possess or enjoy the property or the income therefrom.

Thus even though a trust is irrevocable, Regulation 18234 provides that a beneficiary has no duty to report his or her interest in the trust if there are unlimited powers to invade the trust principal for the benefit of beneficiaries other than the public official or the beneficiaries of the trust can be changed by anyone other than the public official. In either of these situations, the beneficiary may never receive his or her share of the trust principal or income because of circumstances beyond his or her control. Thus, the beneficiary's interest in the trust is too speculative to require disclosure.<sup>3/</sup>

The trusts in question are both irrevocable. The next question is whether either trust provides for unlimited powers to consume, invade or appoint the principal for the benefit of someone other than you, as opposed to a limited power to invade the principal based on an ascertainable standard relating to the beneficiary's health, education, support or maintenance. (Regulation 18234(c)(2)(B)1.) In this regard, trust 1 permits

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<sup>3/</sup> Regulation 18234(c)(2) also could be interpreted as defining as irrevocable a filer's future interest in principal or income unless there exist both unlimited powers to invade the principal for the benefit of someone other than the filer and the power for someone other than the filer to change the beneficiaries of the trust. We choose not to interpret the regulation in this manner because such an interpretation would require a filer to report his or her interest in a trust even though the filer ultimately could be deprived completely of his or her interest in the trust.

the trustee to invade the principal as necessary for the proper support, care and maintenance of the decedent's wife and sister.<sup>4/</sup> In contrast, trust 2 permits the trustee to invade the principal as necessary to provide for the proper health, maintenance and support of the decedent's spouse in a manner consistent with her standard of living at the time of the decedent's death.<sup>5/</sup> Case law provides guidance as to whether the language of either trust gives the trustee unlimited powers to invade the principal for the support of the primary beneficiaries.

In Estate of Nunn (1974) 10 Cal.3d 799, the California Supreme Court considered language similar to that in trust 1. The court held that the language did not limit the trustee's discretion by any ascertainable standard relating to the beneficiary's health, education, support or maintenance. Accordingly, we conclude that trust 1 provides the trustee with unlimited powers to invade the principal for the benefit of the primary beneficiaries. Thus, your interest in trust 1 is not reportable because it is not an irrevocable future interest as provided in Regulation 18234(c)(2).

We reach a different conclusion regarding trust 2. In Estate of Smith (1981) 117 Cal. App.3d 511, the Court of Appeal considered language similar to that in trust 2. The court held that the trustee's powers to invade the principal were limited to an ascertainable standard relating to the beneficiary's health, education, support or maintenance, specifically, the spouse's standard of living at the time of the decedent's death. Accordingly, trust 2 fails to meet the first test in Regulation 18234(c)(2) because it provides the trustee with only limited powers to invade the principal for the benefit of the primary beneficiaries. Therefore, we next discuss whether trust 2 meets the second test in Regulation 18234(c)(2) by providing for someone other than you to designate the persons who shall possess or enjoy the property or the income of the trust.

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<sup>4/</sup> The trustee also may invade the principal at the request of the decedent's wife, but this power to invade the principal is clearly limited to \$10,000 or 2-percent of the principal per calendar year, whichever is greater. Accordingly, it is not an unlimited power to invade the principal and is not sufficient by itself under Regulation 18234 to exempt you from reporting your interest in the trust.

<sup>5/</sup> It should be noted that under trust 2, you are one of four co-trustees denominated in the will. The other co-trustees are the other beneficiaries (your mother and sister) and your cousin.

Trust 2 provides that upon the death of the primary beneficiary, the trustee has discretion to make a nonpro-rata division of assets among the remainder beneficiaries, so long as each beneficiary receives his or her respective 50-percent share. You have inquired whether this is a power to designate the persons who shall possess or enjoy the property or income of the trust. We conclude it is not.

The trustee's discretionary powers to divide the assets among the beneficiaries does not deprive any beneficiary of his or her full share of the total trust assets. Instead, the trustee merely has the power to determine which beneficiary will get a particular asset. It can be argued that your right to ultimately possess any particular trust asset is speculative because of the trustee's powers; however, that argument also can be made regarding the standard powers of the trustee to manage the trust, including the power to sell trust assets. In any event, if the value of a particular trust asset increases or decreases, the value of your beneficial interest also will increase or decrease because, upon distribution, a compensating set-off would be required.

We believe the regulation requires more than the power to determine which of the beneficiaries designated in the trust will get any particular asset. The regulation requires that someone other than the filer have the power to designate or change the beneficiaries of the trust, thereby potentially depriving the filer of any right to receive income or principal under the trust. Trust 2 does not contain such a power. Thus, you have an irrevocable future right to receive the principal of trust 2, and you are therefore required to disclose your interest in trust 2.

The disclosure requirements of the Act require you to report all investment interests and interests in real property in your jurisdiction held by trust 2, if your pro-rata share of those interests is \$1,000 or more. Because you have a 50-percent beneficial interest in the trust, you are required to report the trust's investment and real property interests valued at \$2,000 or more during a calendar year. You also are required to report sources of income to trust 2 in your jurisdiction, if your pro-rata share of the income is \$250 or more during a calendar year. Thus, sources of income to the trust totaling \$500 or more would be reportable, based on your 50-percent interest.

Honorable John K. Van de Kamp  
June 8, 1988  
Page -7-

If you have any questions concerning this letter, please  
contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel



By: Kathryn E. Donovan  
Counsel, Legal Division

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## Office of the Attorney General

John K. Van de Kamp  
Attorney General

May 4, 1988

Diane Griffiths  
General Counsel  
Fair Political Practices Commission  
P.O. Box 807  
Sacramento, CA 95804

Dear Ms. Griffiths:

By letter dated April 22, 1988, Jeanne Pritchard, Division Chief, Technical Assistance and Analysis Division, advised me that in the light of my contingent remainder status in two irrevocable trusts that I might wish to review section 18234(c)(2) of the Commission's regulations to determine whether I should be disclosing on Schedules A or C any investments in property or business interests that the trusts hold. Heretofore, I have merely identified that I had a one-third remainder interest in the trust established by Mr. Walter Van de Kamp, and a one-half remainder interest in the trust established by Mr. Harry Van de Kamp.

Specifically, Attachment A to my current Form 721 provides:

"(1) John Van de Kamp is the beneficiary of a one-third remainder interest in a trust established by Mr. Walter Van de Kamp for the support of Mr. Walter Van de Kamp's surviving widow and sister. The trust provides that John Van de Kamp's interest is limited to one-third of whatever principal remains, and in any event, John Van de Kamp's interest shall not exceed \$250,000, and no amounts are payable to John Van de Kamp until after the death of the primary beneficiaries.

He does not presently receive income from the trust and has a future right to receive income or principal only upon the death of the primary beneficiaries, providing there is still property in the trust."

"(2) John Van de Kamp is the beneficiary of a one-half remainder interest in a trust established by Mr. Harry Van de Kamp, primarily for the support of Mrs. Harry Van de Kamp, his surviving widow.

Diane Griffiths  
Page 2

He does not presently receive income from the trust and has a future right to receive income or principal only upon the death of the primary beneficiary, providing there is still property in the trust."

The above statements have been included in all my prior Forms 721.

According to section 18234 a filer has a beneficial interest in a trust if, among other things, the filer is a beneficiary and has an irrevocable future right to receive income or principal from the trust, or the trust does not allow for anyone to designate who shall possess or enjoy the property or the income therefrom. I receive no income from either trust. Pertinent to my situation is section 18234(c)(2) which provides that an irrevocable future right exists if:

1. "No powers exists 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;"

Attached are the two wills setting up the two trusts in issue. Both contain provisions authorizing the invasion of principal. On page 2 of the will of Harry Joseph Van de Kamp, section 4.2.2 provides in part:

"If it appears to the trustee that my spouse is in need of funds for my spouse's proper health, maintenance, and support in a manner consistent with the standard of living of my spouse at my death, then the trustee, after taking into account other sources of funds which may be used for such purposes, shall from time to time distribute as much of the principal of the trust to my spouse as the trustee in the trustee's discretion determines to be appropriate to provide for such purposes."

On page 4 of the will of Walter Van de Kamp, section EIGHTH, paragraph 3 provides in part:

"If the trustee deems such payments to my wife, or to my sister, MARION VAN DE KAMP, to be insufficient, the trustee shall, from time to time, pay to my wife or to my sister, MARION, such sums out of principal as the trustee in the trustee's discretion, deems necessary for their respective proper support, care and maintenance. In making such payments under this subparagraph to

my sister, the trustee shall take into consideration to the extent the trustee deems advisable any income or other resources of my sister, MARION, outside of this trust, known to the trustee."

On page 5, paragraph 4 provides in part:

"In addition to any other payments that my wife may receive under this will, the trustee shall pay to her during her lifetime, from the principal of the trust, such amounts as she may from time to time request in writing, not exceeding in any calendar year the greater of the following amounts: Ten Thousand Dollars (\$10,000.00) or two per cent (2%) of the value of the principal of the trust, determined as of the time of the withdrawal."

Under section 18234(c)(2) an irrevocable right to receive principal or income also exists if:

"2. Under the terms of the trust, no one else can designate the persons who shall possess or enjoy the property or the income therefrom."

As noted previously, I am not entitled to any income from the trust during its life, but am only a contingent remainderman as to a portion of the corpus upon distribution. Both trusts accord the trustees broad powers to sell and purchase the assets of the trust and upon distribution, the trustees are under no obligation to make a prorata division of the assets.

On page 11 of the will of Harry Joseph Van de Kamp section 4.6.3. provides in part:

"... the trustee may, in the trustee's discretion, make a nonprorata division between trusts or shares and nonprorata 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."

On page 9 of the will of Walter Van de Kamp section EIGHTH, paragraph 11(k) provides in part:

"In any case in which the trustee is required, pursuant to the provisions of this trust, to divide any trust property into parts or shares for the purpose of distribution, or otherwise, the trustee is authorized, in the trustee's absolute discretion, to make the division and

Diane Griffiths  
Page 4


distribution in kind, including undivided interests in any property, or partly in kind and partly in money, and for this purpose to make such sales of the trust property as the trustee may deem necessary on such terms and conditions as the trustee shall see fit."

I am requesting formal written advice whether I am a "beneficiary" having an "irrevocable future right" under both of the above wills. I would hope that in providing a response you would articulate what constitutes "an ascertainable standard" relating to the health, education, support and maintenance of the trust beneficiaries. While both wills differ slightly in the general purpose for which the corpus of the trust may be invaded, the language is very broad and becomes even broader by the power accorded the respective trustees to use their discretion.

Further, as the trustees under both wills have the power to select which of the trust assets are ultimately distributed to the remainderman, I would hope that you would address whether the trustee is one who "can designate the persons who shall possess or enjoy the property or the income therefrom".

It is my understanding that I need not supplement my existing Form 721 until you determine my responsibilities under section 18234.

Very truly yours,



JOHN K. VAN DE KAMP  
Attorney General

cc: John Larson  
Attachment

WILL  
OF  
HARRY JOSEPH VAN de KAMP

I, HARRY JOSEPH VAN de KAMP, a resident of the County of Los Angeles, State of California, declare this to be my will and revoke all prior wills and codicils.

1.1 I am married to GEORGIE ELIZABETH VAN de KAMP. I have two (2) children; JOHN KALAR VAN de KAMP and GRETCHEN VAN de KAMP WARD. I have no deceased children. All references in this instrument to "my spouse" shall refer to my wife, GEORGIE ELIZABETH VAN de KAMP.

2.1 I intend by this will to dispose of all property over which I have power of testamentary disposition. I do not intend to exercise any power of appointment which I may have at my death unless such power is expressly mentioned in my will.

3.1 I give the following property to the following persons.

3.1.1 I give my spouse my interest in my residences subject to any encumbrances on such residences, my furniture and furnishings, clothing, jewelry, artwork, books, personal vehicles and all other items of personal, domestic or recreational use or adornment provided my spouse



SURVIVES ME for thirty (30) days. The term "my residences" shall include whatever interest I have at my death in my dwellings in Pasadena and Laguna Beach.

3.1.2 If my spouse does not survive me for thirty (30) days, then I give all of the property described in paragraph 3.1.1, above, with the exception of my interest in my residences, in equal shares to my children who are living at my death to be divided as they may agree.

3.1.3 If my spouse does not survive me for thirty (30) days, my interest in my residences shall pass as a part of the residue of my estate.

4.1 I give all of the residue of my estate, including any lapsed gifts, to the trustee hereinafter named, in trust. The trustee shall be referred to in the singular number regardless of whether there are one or more than one trustee.

4.2 The trust estate shall be held, administered and distributed according to the following provisions.

4.2.1 Commencing at my death, the net income of the trust shall be distributed to my spouse in convenient installments, but at least quarter-annually.


4.2.2 If it appears to the trustee that my spouse is in need of funds for my spouse's proper health, maintenance, and support in a manner consistent with the standard of living of my spouse at my death, then the trustee,

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after taking into account other sources of funds which may be used for such purposes, shall from time to time distribute as much of the principal of the trust to my spouse as the trustee in the trustee's discretion determines to be appropriate to provide for such purposes.

4.2.3 On the death of my spouse, or on my death should my spouse predecease me, the trustee shall distribute outright and free of trust property or cash, or a combination of both, having a value of ten thousand dollars (\$10,000.00) to each of my then living grandchildren. The remaining trust estate shall be divided into equal full shares and partial shares. One such full share shall be allocated to each of my then living children. One such full share shall be allocated to the then living issue of each deceased child of mine in partial shares, such issue to take by right of representation. Each share and partial share shall be considered a separate trust and shall be held, administered and distributed as a separate trust.

4.2.4 The net income of each trust above established for a beneficiary shall be distributed to such beneficiary in convenient installments, but at least quarterly. Until a beneficiary attains the age of twenty-one (21) years, said income shall be distributed in such amounts and at such times as the trustee shall in the trustee's discretion determine is necessary for the beneficiary's proper health, maintenance, support and education. Any income not distributed



shall, subject to future discretionary distribution, be accumulated and added to the principal of such trust.

4.2.5 On the death of my spouse, or on my death should my spouse predecease me (hereinafter the "designated date"), one-third (1/3) of the principal of the trust established for each child of mine shall be distributed to such child. Three years after the designated date, one-half (1/2) of the remaining balance of the principal of the trust established for each child of mine shall be distributed to such child. Five years after the designated date, the balance of the principal of the trust established for each child of mine shall be distributed to such child.

4.2.6 When an issue of a deceased child of mine for whom a trust share has been established attains the age of twenty-one (21) years, all of the principal of such issue's trust shall be distributed to such issue.

4.2.7 If a beneficiary of a trust established by this instrument dies before becoming entitled to complete distribution of his or her trust, then such undistributed balance of such beneficiary's trust shall be distributed to such beneficiary's then living issue, such issue to take by right of representation. If any of such issue are then under twenty-one (21) years of age, then the assets allotted to issue under twenty-one (21) years of age shall continue to be held in trust for such issue until such issue has attained the age of



twenty-one (21) years. The net income of the trusts for each of such issue shall be distributed in such amounts and at such times as the trustee shall in the trustee's discretion determine is necessary for the beneficiary's proper health, maintenance, support and education. Any income not distributed shall, subject to future discretionary distribution, be accumulated and added to the principal of such trust. When an issue attains the age of twenty-one (21) years, all of the principal of such issue's trust shall be distributed to such issue.

4.2.8 If a beneficiary of a trust established by this instrument dies before becoming entitled to complete distribution of his or her trust and is not survived by any issue, then such undistributed balance of such beneficiary's trust shall be distributed to the then living issue of such beneficiary's parents, such issue to take by right of representation. If there are no such issue then living, then such undistributed balance of such beneficiary's trust shall be distributed to my then living issue, such issue to take by right of representation. If a person entitled to distribution is a beneficiary of a trust established by this instrument, then the portion distributable to such beneficiary shall instead be added to that trust and administered according to its terms. Any addition to a partially distributed trust shall augment proportionately to the distributed and undistributed portions of the trust.



4.2.9 If at any time before complete distribution of the trust estate, my spouse and all of my issue are deceased and no other disposition of the trust estate is directed by this instrument, then the remaining portion of the trust estate shall be distributed outright to my then living heirs at law. Such heirs shall be identified and their respective shares determined according to the laws of succession to separate property not acquired from a parent, grandparent or previously deceased spouse then in effect in the State of California.

4.2.10 The trustee shall not be required to conserve the principal of the trust estate for the persons who may ultimately become entitled to it. On the contrary, if at any time after my spouse's death it appears to the trustee that a beneficiary for whom a trust exists is in need of funds for such beneficiary's proper health, maintenance, support and education in a manner consistent with such beneficiary's accustomed standard of living, then the trustee shall from time to time distribute as much of the principal of such beneficiary's trust to such beneficiary as the trustee in the trustee's discretion deems advisable. Such distributions shall be charged against the trust of the beneficiary receiving such distribution.

4.2.11 Unless sooner terminated in accordance with other provisions of this instrument, the trusts created by

this instrument shall terminate one day prior to the date which is twenty-one (21) years after the death of the last to die of the natural persons who are beneficiaries of the trusts established by this will and who are living at my death. On termination, the trust estate shall be distributed free of trust to the beneficiaries of the trusts in the proportion in which the beneficiaries are entitled to receive the income of the trust estate. If at the time of termination the rights to income are not fixed by the terms of the trust, distribution shall be made by right of representation to the persons who may in the trustee's discretion receive trust distributions.

#### LIMITATION ON BENEFICIARIES

4.3 No interest in the income or principal of any trust established by this instrument shall be anticipated, assigned, encumbered, subject to the claims of creditors or subjected to any form of legal or equitable levy or lien prior to its actual receipt by the beneficiary.

#### MANNER OF DISTRIBUTION

4.4 In any case where the trustee is authorized to make a distribution of trust income or a distribution of trust principal to a beneficiary, the trustee may at the trustee's

discretion make such distribution by making payment directly to such beneficiary or may apply such distribution for the use and benefit of such beneficiary. The circumstances when the trustee may apply income for the beneficiary's benefit shall include (but not be limited to) circumstances in which the trustee determines that the beneficiary is incapacitated through illness or other cause, the beneficiary is under the age of twenty-one (21) years or the distribution is liable to be immediately subject to attachment, execution or other form of levy in the hands of the beneficiary. Any such application of income or principal shall be made at such times and in such manner as the trustee deems advisable and may include payments to persons and organizations other than the beneficiary provided the payment is for the benefit of the beneficiary. In such cases, the receipt of the person or organization to whom the payment is made or entrusted shall be a complete discharge of trustee's responsibilities.

#### APPOINTMENT AND REGULATION OF TRUSTEE

4.5 The trustee shall be appointed and regulated according to the following provisions.

4.5.1 My spouse, GEORGIE ELIZABETH VAN de KAMP, my son, JOHN KALAR VAN de KAMP, my daughter, GRETCHEN VAN de KAMP WARD, and my nephew, RICHARD N. FRANK, or the survivors thereof are designated as the co-trustees of the trusts established by

this instrument. At such time as only one of the above-named individual trustees remains to administer the trusts, such trustee shall designate and appoint by an instrument in writing another individual trustee to serve as co-trustee. If such remaining individual trustee should fail to designate and appoint a co-trustee, any person interested in the trusts may request that a court having jurisdiction over the trusts appoint a corporate trustee to serve as co-trustee and on the death of the last individual trustee, such corporate trustee shall continue to serve as sole trustee.

4.5.2 No bond or other security shall be required of any trustee named in this trust whether acting jointly or alone.

4.5.3 No trustee named in this instrument shall be liable for any act, omission or default of any co-trustee. No successor trustee shall be obligated to examine the accounts, records and acts of any previous trustees. A trustee shall be responsible only for his willful misconduct or gross negligence.

4.5.4 Unless the trustee has received actual notice of the occurrence of an event affecting the beneficial interests of this trust, the trustee shall not be liable to any beneficiary of this trust for distributions made as though the event had not occurred.

4.5.5 The trustee shall be entitled to reasonable compensation and reimbursement for expenses. Such compen-



sation and reimbursement for expenses shall be paid from and be a proper expense of the trust estate.

#### POWERS OF TRUSTEE

4.6 In order to carry out the purposes of the trusts established by this will, the trustee shall have the following powers in addition to those powers now or hereafter conferred by law.

4.6.1 The trustee shall have all of the powers delineated in Section 1120.2, subsections (1) through (17), of the California Probate Code, which are incorporated by reference into this will.

4.6.2 To release or to restrict the scope of any power that the trustee may hold in connection with any trust created under this instrument, whether such power is expressly granted in the instrument or implied by law. The trustee shall exercise this power in a written instrument executed by the trustee, specifying the powers to be released or restricted and the nature of the restriction.

4.6.3 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 nonprorata division between trusts or shares and nonprorata 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.

4.6.4 Except as otherwise specifically provided in this instrument, the determination of all matters with respect to what is principal and income of the trust estate and the apportionment and allocation of receipts and expenses between these accounts shall be governed by the provisions of the California Revised Uniform Principal and Income Act from time to time existing. Any such matter not provided for either in this instrument or in the California Revised Uniform Principal and Income Act shall be determined by the trustee in the trustee's discretion.

4.6.5 There need be no physical segregation or division of the various trusts 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.

5.1 If any beneficiary under this will attacks or contests this will in any manner, directly or indirectly, any interest in my estate given to such beneficiary under this will is revoked and shall be disposed of in the same manner provided by this instrument as if such contesting beneficiary had predeceased me.

6.1 I direct that all estate, inheritance and other death taxes payable by reason of my death and attributable to my probate estate or to assets which are community property and which pass to my spouse pursuant to this will without probate administration shall be paid from the residue of my probate estate. Such taxes shall be paid without adjustment or pro-rata among the beneficiaries of the residue of my probate estate.

6.2 My executor may take any actions and may make any elections which in the opinion of my executor will serve to minimize the tax liabilities of my estate and its beneficiaries. My executor shall make the appropriate adjustments in the rights of beneficiaries to compensate for the effects of any actions or elections which my executor believes have the effect of favoring one beneficiary or group of beneficiaries over others.

7.1 For purposes of this instrument, definitions of certain terms and rules of construction are provided.

7.1.1 References to "child" or "children" mean lawful blood descendants in the first degree of the parent designated. References to "issue" mean lawful blood descendants in the first degree or any other degree of the ancestor designated. Lawful blood descendants shall include all persons legitimate at birth or subsequently made legitimate.

7.1.2 A legally adopted child who was at the date of adoption under the age of eighteen (18) years and such adopted child's lawful blood descendants shall be considered as lawful blood descendants of the adopting parents or parent and of anyone who is by blood or adoption an ancestor of the adopting parents.

7.1.3 References to "education" shall include college and postgraduate study and vocational training as long as in the trustee's discretion such education is pursued to the advantage of the beneficiary at an institution of the beneficiary's choice. In determining distributions to be made to provide for such education, the trustee may consider the beneficiary's reasonably related living expenses and traveling expenses.

7.1.4 References to "executor" or "executors" mean an executor, executrix, administrator, administratrix, personal representative or other person or persons charged with the responsibility for the administration of my estate.

(10)

(12) pages, including this page, was at the date hereof by the said WALTER VAN DE KAMP signed and published as and declared to be his last will in the presence of us, who at his request and in his presence and in the presence of each other, have subscribed our names as witnesses thereto. He was of sound mind at the time, to the best of our knowledge and belief.

CAROL CARNES residing at 535 So. Normandie  
Los Angeles, California

SUZI WHEELER residing at 780 Granada  
San Marino, California

D.  
ELAINE LARSEN residing at 1815 North Serrano Ave.  
Los Angeles, Calif.

7.1.5 Unless the context clearly requires another construction, the masculine, feminine and neuter genders shall each include the others, and the singular and plural numbers shall include the other.

7.1.6 If any provision or provisions of this instrument is invalid or unenforceable, the remaining provisions shall continue to be fully operative.

8.1 I appoint my spouse, GEORGIE ELIZABETH VAN de KAMP, to act as executor of my will. In the event my spouse is unable to act or continue to act as executor, I appoint my son, JOHN KALAR VAN de KAMP, to act as executor of my will. If my son is also unable to act or continue to act as executor, I appoint my daughter, GRETCHEN VAN de KAMP WARD, to act as executor of my will. If all of the foregoing persons are unable to act as executor, I appoint my nephew, RICHARD N. FRANK, to act as executor of my will. Each executor shall act without bond.

8.2 I authorize my executor to lease, encumber, sell and convey, with or without notice, at public or private sale, any property belonging to my estate which my executor in my executor's discretion deems necessary for the proper administration and distribution of my estate. My executor may continue to hold, manage and operate any business belonging to my estate. My executor may sell or liquidate such business at

1/24

such time and on such terms as my executor may deem advisable. Any such operation, sale or liquidation by my executor in good faith shall be at the risk of my estate and without liability on the part of my executor for resulting loss. My executor is authorized to buy assets of my estate and enter into other transactions with my estate while acting as executor of my estate. All such sales and other transactions shall be at fair market value and subject to confirmation by the probate court having jurisdiction over my probate estate. My executor shall have the power to exercise stock options and shall have all the powers delineated in Section 1120.2, subsections (1) through (17), of the California Probate Code, including the power to invest and reinvest the assets of my estate.

I subscribe my name to this will on this 21<sup>st</sup> day of December, 1976.

*Harry Joseph Van de Kamp*  
HARRY JOSEPH VAN de KAMP

The foregoing instrument, consisting of sixteen (16) pages, including the next page, was at the date indicated, by HARRY JOSEPH VAN de KAMP signed as and declared to be his will, in the presence of us who, at his request and in his presence, and in the presence of each other, have subscribed our names as witnesses. Each of us observed the signing of this will by HARRY JOSEPH VAN de KAMP and by each of the

other subscribing witnesses and knows that each signature is the true signature of the person whose name was signed.

Each of us is now more than eighteen (18) years of age and is a competent witness who resides at the address set forth after his or her name.

We are acquainted with HARRY JOSEPH VAN de KAMP. At this time, he is over the age of eighteen (18) years, and to the best of our knowledge he is of sound mind and is not acting under duress, menace, fraud, misrepresentation, or undue influence.

We declare under penalty of perjury that the foregoing is true and correct.

Executed on December 21, 1976 at Los Angeles, California.

Russell I. Kell residing at 1925 Lombardy Pl  
SAN MARINO CALIF.  
Elizabeth L. Roche residing at 1437 East Windsor Rd  
Glendale Calif  
Denis Watt residing at 91 Arlington Drive  
Pasadena, Calif.

9/1/80

LAST WILL AND TESTAMENT

OF

WALTER VAN DE KAMP

I, WALTER VAN DE KAMP, a resident of Los Angeles County, California, declare that this is my will.

FIRST: I revoke all wills and codicils that I have previously made.

SECOND: I am married to VIRGINIA WEBSTER VAN DE KAMP and all references in this will to my wife are to her. I have no children, living or deceased.

THIRD: I intend by this will to dispose of my separate property, and all community property of my wife and myself, with the exception of my wife's interest, which I confirm to her, in any community property mentioned in paragraphs FOURTH and FIFTH of this will. I believe it to be for my wife's benefit to take under this will and I request that she give careful consideration to doing so. If my wife elects to take the rights given her by law, the provisions of paragraph EIGHTH shall be carried into effect as if she had predeceased me; but she shall be entitled to all other benefits given her by this will with respect to any property remaining subject to it.

FOURTH: I give all my household furniture and furnishings, personal automobiles, and other tangible articles of a personal nature, or my interest in any such property, not otherwise specifically disposed of by this

3. I give the sum of Twenty-Five Thousand Dollars (\$25,000.00) to my nephew, TED E. VAN DE KAMP, of Los Angeles, California, if he survives me for one hundred and eighty (180) days, and if he does not, to his issue who survive me by that period by right of representation.

4. I give the sum of Twenty-Five Thousand Dollars (\$25,000.00) to my nephew, JOHN K. VAN DE KAMP, of Pasadena, California, if he survives me for one hundred and eighty (180) days, and if he does not, to his issue who survive me by that period by right of representation.

5. I give the sum of Five Thousand Dollars (\$5,000.00) to my brother-in-law, WARREN WEBSTER, of Los Angeles, California, if he survives me for one hundred and eighty (180) days, and if he does not, to his issue who survive me for that period by right of representation.

6. I give the sum of Ten Thousand Dollars (\$10,000.00) to my wife's daughter, SARA SUE ZAMASIN, of West Los Angeles, California, if she survives me for one hundred and eighty (180) days, and if she does not, to her issue who survive me for that period by right of representation.

7. I give my clothes, personal jewelry, golf clubs and golfing equipment, guns and other sporting equipment to my nephew, ARTHUR H. VAN DE KAMP, of Bellevue, Washington, if he survives me for thirty (30) days, and if he does not, the gifts shall go to All Saints Church, Beverly Hills, California.

8. I give my camera and accessories to my nephew, TED E. VAN DE KAMP, of Los Angeles, California,

if he survives me for thirty (30) days, and if he does not, the gifts shall go to All Saints Church, Beverly Hills, California.

SEVENTH: I refrain from exercising any powers of appointment that I may have at the time of my death.

EIGHTH: I give the residue of my estate in trust to BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, to be held, administered and distributed as follows:

1. If my wife survives me, the trustee shall pay to her or apply for her benefit during her lifetime, quarter annually, or at more frequent intervals, the entire net income of the trust remaining after the provision for my sister which is set out in subparagraph 2 immediately below.

2. If my sister, MARION VAN DE KAMP, survives me, the trustee shall pay to her or apply for her benefit during her lifetime, from the income of the trust estate, the sum of Twenty-Five Hundred Dollars (\$2500.00) per year, payable in quarter annual installments or installments at a more frequent interval, as the trustee deems advisable.

3. If the trustee deems such payments to my wife, or to my sister, MARION VAN DE KAMP, to be insufficient, the trustee shall, from time to time, pay to my wife or to my sister, MARION, such sums out of principal as the trustee in the trustee's discretion, deems necessary for their respective proper support, care and maintenance. In making such payments under this subparagraph to my sister, the trustee shall take into consideration to the extent the

trustee deems advisable any income or other resources of my sister, MARION, outside of this trust, known to the trustee.

4. In addition to any other payments that my wife may receive under this will, the trustee shall pay to her during her lifetime, from the principal of the trust, such amounts as she may from time to time request in writing, not exceeding in any calendar year the greater of the following amounts: Ten Thousand Dollars (\$10,000.00) or two per cent (2%) of the value of the principal of the trust, determined as of the time of the withdrawal. This right of withdrawal is noncumulative so that if my wife does not withdraw, during any calendar year, the full amount to which she is entitled under this provision, her right to withdraw the amount not withdrawn shall lapse at the end of that calendar year.

5. On the death of my wife, in the trustee's discretion, income or principal of the trust must be used to pay her last illness and funeral expenses and other obligations incurred for her support.

6. On the death of my wife, or on my death, if she does not survive me, the trustee shall pay to my sister, MARION VAN DE KAMP, during her lifetime, quarter annually or at more frequent intervals, the entire net income of the trust.

7. On the death of the last survivor of my wife, my sister, MARION, and myself, the trustee shall distribute Two Hundred Fifty Thousand Dollars (\$250,000.00) of my trust estate (including both principal and any accrued or

undistributed income) to my nephew, ARTHUR H. VAN DE KAMP, free of trust, Two Hundred Fifty Thousand Dollars (\$250,000.00) to my nephew, JOHN K. VAN DE KAMP, Washington, D. C., and Pasadena, California, free of trust, and Two Hundred Fifty Thousand Dollars (\$250,000.00) to my nephew, TED E. VAN DE KAMP, Los Angeles, California, free of trust, and the balance of principal and income shall go to MARQUETTE UNIVERSITY to be used specifically for promoting intramural sports or a comparable physical fitness program.

8. If at the time of my death or at any later time before full distribution of the trust estate, my wife, my sister, MARION VAN DE KAMP, and my nephews, ARTHUR H. VAN DE KAMP, TED E. VAN DE KAMP and JOHN K. VAN DE KAMP, are deceased and no other distribution is directed by this will, the trust estate or any portion of it then remaining shall thereupon be distributed to MARQUETTE UNIVERSITY for the purposes indicated in subparagraph 7 above.

9. No interest in the principal or income of any trust created under this will shall be anticipated, assigned, or encumbered, or subject to any creditor's claim or to legal process, prior to actual receipt by the beneficiary.

10. Unless sooner terminated in accordance with other provisions of this will, each trust created under this will shall terminate after the death of the last survivor of my wife, and my sister, MARION. All principal and undistributed income of any trust so terminated shall be distributed in accordance with subparagraphs 7 and 8 of paragraph EIGHTH of this will.

11. To carry out the purposes of any trust created

under this paragraph EIGHTH and subject to any limitations stated elsewhere in this will, the trustee is vested with the following powers with respect to the trust estate and any part of it, in addition to those powers now or hereafter conferred by law:

(a) To continue to hold any property, including shares of the trustee's own stock, 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;

(b) To manage, control, grant options on, sell (for cash or on deferred payments), convey, exchange, partition, divide, improve, and repair trust property;

(c) To lease trust property for terms within or beyond the term of the trust and 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;

(d) To borrow money, and to encumber or hypothecate trust property by mortgage, deed of trust, pledge, or otherwise;

(e) To carry, at the expense of the trust, insurance of such kinds and in such amounts as the trustee deems advisable to protect the trust estate and the trustee against any hazard;

(f) To commence or defend such litigation with respect to the trust or any property of the trust estate as the trustee may deem advisable, at the expense of the trust;

(g) To compromise or otherwise adjust any claims or litigation against or in favor of the trust;

(h) To invest and reinvest the trust estate in

every kind of property, real, personal, or mixed, and every kind of investment, specifically including, but not by way of limitation, corporate obligations of every kind, stocks, preferred or common, shares of investment trusts, investment companies, and mutual funds, and mortgage participations, which men of prudence, discretion, and intelligence acquire for their own account, and any common trust fund administered by the trustee.

(i) With respect to securities held in the trust, to have all the rights, powers, and privileges of an owner, including, but not by way of limitation, the power to vote, give proxies, and pay assessments; to participate in voting trusts, pooling agreements, foreclosures, reorganizations, consolidations, mergers, liquidations, sales, and leases, 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 subscription or conversion rights.

(j) Except as otherwise specifically provided in this will, the trustee shall determine what is principal or income of the trust estate and shall apportion and allocate receipts and expenses and other charges between these accounts in accordance with the provisions of the California Principal and Income Law from time to time existing. The trustee may not, however, treat capital gains distributions by mutual funds or similar organizations as income and must protect the principal by depletion and depreciation reserves whenever trust assets are subject to

any such diminution.

(k) In any case in which the trustee is required, pursuant to the provisions of the trust, to divide any trust property into parts or shares for the purpose of distribution, or otherwise, the trustee is authorized, in the trustee's absolute discretion, to make the division and distribution in kind, including undivided interests in any property, or partly in kind and partly in money, and for this purpose to make such sales of the trust property as the trustee may deem necessary on such terms and conditions as the trustee shall see fit.

12. There need be no physical segregation or division of the various trusts 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.

13. The term "the trustee" as used in this will shall include any trustee named in this will. No bond shall be required of any person named as the trustee in this will.

NINTH: If any beneficiary under this will in any manner, directly or indirectly, contests or attacks this will or any of its provisions, any share or interest in my estate given to that contesting beneficiary under this will is revoked and shall be disposed of in the same manner provided herein as if that contesting beneficiary had predeceased me without issue.

TENTH: I have, except as otherwise provided in this will, intentionally and with full knowledge, declined

to provide for any heirs of mine who may be living at my death and I direct that such persons, if any, shall take no part of my estate.

ELEVENTH: I direct that all inheritance, estate, or other death taxes that may by reason of my death be attributable to my probate estate or any portion of it, or to any property or transfers of property outside my probate estate, shall be paid by my executor out of the residue of my estate disposed of by this will, without adjustment among the residuary beneficiaries, and shall not be charged against or collected from any beneficiary of my probate estate, or from any transferee or beneficiary of any property outside my probate estate.

TWELFTH: Should any part, clause, provision or condition of this will be held to be void, invalid or inoperative, then I direct that such invalidity shall not affect any other provisions hereof, which shall be effective as though such invalid provision had not been made.

THIRTEENTH: I nominate my wife, VIRGINIA WEBSTER VAN DE KAMP, and BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION to serve without bond as Executors of this will.

If one of the named nominees shall for any reason fail to qualify or cease to act as Executor, I nominate the remaining nominee as sole Executor of this will to serve without bond. The term "my Executor" as used in this will shall include any personal representative of my estate.

I authorize my Executor to sell, with or without

notice, at either public or private sale, and to lease any property belonging to my estate, subject only to such confirmation of court as may be required by law.

I further authorize my Executor either to continue the operation of any business belonging to my estate for such time and in such manner as my Executor may deem advisable and for the best interests of my estate, or to sell or liquidate the business at such time and on such terms as my Executor may deem advisable and for the best interests of my estate. Any such operation, sale, or liquidation by my Executor, in good faith, shall be at the risk of my estate and without liability on the part of my Executor for any resulting losses.

FOURTEENTH: As used in this will, the term "issue" shall refer to lineal descendants of all degrees, and the terms "child", "children", and "issue" shall include adopted persons.

FIFTEENTH: As used in this will the masculine, feminine and neuter genders shall each include the others, and the singular and plural numbers shall each include the other unless the context of this will requires a contrary construction.

IN WITNESS WHEREOF, I hereunto set my hand this  
16th day of May, 1969.

WALTER VAN DE KAMP  
Walter Van De Kamp

The foregoing instrument, consisting of twelve



# California Fair Political Practices Commission

May 6, 1988

Honorable John Van de Kamp  
Attorney General  
P.O. Box 944255  
Sacramento, CA 94244-2550

Re: 88-169

Dear Mr. Van de Kamp:

Your letter requesting advice under the Political Reform Act was received on May 5, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Kathryn Donovan, an attorney in the Legal Division, directly at (916) 322-5901.

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 information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. 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 "Diane M. Griffiths".

Diane M. Griffiths  
General Counsel

DMG:plh