



California Fair Political Practices Commission

June 28, 1988

Honorable John K. Van de Kamp
Attorney General
1515 K Street, Suite 600
P.O. Box 944255
Sacramento, CA 94244-2550

Re: Your Request for Advice
Our File No. A-88-233

Dear Attorney General Van de Kamp:

You have requested that we reconsider our advice to you concerning disclosure of assets held by a trust in which you have a remainder interest. In our advice letter No. A-88-169 we advised you that, for purposes of the Political Reform Act (the "Act")^{1/}, you have an irrevocable right to receive income or principal from the trust established by Mr. Harry Van de Kamp. Thus, we concluded that 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.

In accordance with our advice, you have submitted amendments to your 1987 statement of economic interest. However, you have asked us to look again at several factors about the trust which you believe lead to the conclusion that you are not required to report the trust's assets. In our previous letter, we specifically considered the following facts:

- (1) You have no right to income or principal at present.
- (2) Your mother, the principal beneficiary, can invade the principal; however, this power is limited to an ascertainable standard based on health, education, support or maintenance.
- (3) The trustee has discretion to make a nonpro-rata division of assets among the remainder beneficiaries, so long

^{1/} 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.

Honorable John K. Van de Kamp
June 28, 1988
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as each beneficiary receives his or her respective 50-percent share.

Notwithstanding these provisions in the trust, we concluded that your remainder interest is irrevocable within the standards of Regulation 18234. In your letter, you mention two other factors for our consideration. First, the trust provides that you will receive nothing from the trust should you die before your mother, the principal beneficiary. Second, the trust specifically prohibits you from anticipating, assigning, encumbering or otherwise using the trust principal or income prior to your mother's death.

Neither of these factors changes our determination that, under Regulation 18234, you are required to disclose your pro-rata share of the assets of the trust. Regulation 18234(c)(2)(B) provides that you would have no duty to report your interest in the trust if there are unlimited powers to invade the trust principal for the benefit of other beneficiaries, or if the beneficiaries of the trust can be changed by someone other than you. The two additional factors that you mention in your letter do not appear to grant either an unlimited power to invade the trust principal or the power to change beneficiaries. Accordingly, we must continue to advise that you are required to report your pro-rata share of the trust assets because, under the Act, you have an irrevocable beneficial interest in the trust.

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

Sincerely,

Diane M. Griffiths
General Counsel

Kathryn E. Donovan
By: Kathryn E. Donovan
Counsel, Legal Division

DMG:KED:plh

STATE OF CALIFORNIA
P. O. Box 944756
Sacramento, California 94244-2580
(916) 324-6437

STATE OF CALIFORNIA
Los Angeles, California 90010
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JUN 23 9 40 AM '88

State of California
Office of the Attorney General
John K. Van de Kamp
Attorney General

June 16, 1988

California Fair Political Practices Commission
Diane M. Griffiths, General Counsel
Legal Division
428 "J" Street, Suite 800
P O Box 807
Sacramento, California 95804-0807

ATTENTION: KATHRYN E. DONOVAN, COUNSEL

Dear Ms. Donovan:

Herewith I am filing an amended Schedule C-2, to be attached to my Form 721 Statement of Economic Interests for the calendar year 1987, which was filed February 22, 1988.

The amended filing is based upon your June 8, 1988, letter of advice which opines that I have an irrevocable right to receive principal or income from a trust established by my father, Harry Van de Kamp, upon his death in 1977.

You conclude on what I believe is a matter of first impression that the trust established in my father's will falls within the reporting requirements of Section 182234 of your regulations.

As I am sure you know, over the years, in an attachment to my Form 721, I have consistently disclosed my interest in this trust, as well as another which you opine does not require a filing.

In that attachment I have stated: "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. 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."

California Fair Political Practices Commission
Ms. Kathryn E. Donovan
June 16, 1988
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We reviewed your regulations earlier and had determined that whatever interest I possessed was so remote as to fall outside the coverage of your regulations. Nonetheless, out of an abundance of caution, we flagged the trust for you in our annual reports, should there be any question.

Several factors within the trust confirm my view that the trust is beyond the coverage of your regulations:

(1) I do not have a right to income or principal during the life of my mother; she is still alive.

(2) There is at least a possibility, given the invasion powers and the future vagaries of investment, that there might be nothing left in the trust upon the death of my mother, when I would be in a position to have a limited right to part of the principal.

(3) Under Section 4.27 it is also clear that should I die before my mother, I have no interest in the trust -- to wit, no power to name a beneficiary to replace my position. In other words, I would not have the right to pass on my inchoate right to my wife or to a designated friend.

(4) Should I be in a position to take my interest in the trust upon the death of my mother, I have no absolute right to any specific investment then in the trust. The trustee has discretion at that point to make a non-pro rata division of shares between trustees as long as the respective assets have equivalent or proportionate fair market value.

(5) Section 4.3 of the trust stipulates that, "No interest in the income or principal of any trust established by this trust should 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."

When these factors are taken together, a strong case exists that your regulations do not require my reporting of the trust's assets.

Nonetheless, I learned long ago as a practical matter that full disclosure is the order of the day and one of the prices exacted when one is in public life.


I have therefore obtained from the trust's accountant a listing of what I believe to be the required information, and by this letter, am filing an amendment to Form 721 for the calendar year 1987.

California Fair Political Practices Commission
Kathryn E. Donovan
June 16, 1988
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At the same time, given the conditions of the trust as stated in this letter, I ask that you reconsider the opinion letter which you sent to me.

While I disagree with the conclusion of the letter of advice, I appreciate the manner in which this matter has been handled and the time and attention given to it. Should there be any further questions about this or any other matter within your jurisdiction with which I am involved, please do not hesitate to contact me.

Very truly yours,



JOHN K. VAN DE KAMP
Attorney General

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• Enclosure
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JOHN K. VAN DE KAMP
AMENDMENT TO 1987 FORM 721 -- SCHEDULE C-2
INVESTMENTS HELD BY A BUSINESS ENTITY OR TRUST

Investments held by Harry J. Van de Kamp Trust

1987 Transactions

Pitney-Bowes
common stock
business machines
acquired: 8-20-86
disposed: 3-17-87
value: \$10,001 to \$100,000

Delmarva Power and Light
common stock
public utility
acquired: 11-13-85
disposed: 3-27-87
value: \$10,001 to \$100,000

USF&G Corporation
preferred stock
insurance
acquired: 7-31-86
disposed: 5-22-87
value: \$10,001 to \$100,000

Household International
preferred stock
finance; insurance; manufacturing
acquired: 9-9-85
disposed: 5-26-87
value: \$10,001 to \$100,000

Dayton-Hudson Corporation
common stock
retail merchandise
acquired: 2-7-86
disposed: 6-8-87
value: \$10,001 to \$100,000

May Department Stores
common stock
retail merchandise
acquired: 9-9-85
disposed: 6-8-87
value: \$10,001 to \$100,000

John K. Van de Kamp -- Amendment to Form 721 -- Schedule C-2

Reynolds Metals Company
common stock
aluminum production
acquired: 1-30-86
disposed: 6-8-87
value: \$10,001 to \$100,000

Southwestern Bell Corporation
common stock
telephone company
acquired: 11-13-86
disposed: 6-8-87
value: \$10,001 to \$100,000

Tyco Labs Incorporated
common stock
fire protection and safety; electronics; packaging
acquired: 1-31-86
disposed: 6-8-87
value: \$10,001 to \$100,000

US West Incorporated
common stock
telephone company
acquired: 3-27-87
disposed: 6-6-87
value: \$10,001 to \$100,000

McKesson Corporation
bond
drugs and health care; general merchandise; beverages
acquired: 6-10-81
disposed: 6-10-87
value: \$10,001 to \$100,000

Bank of New York
bond
banking
acquired: 11-4-86
disposed: 6-30-87
value: \$10,001 to \$100,000

John K. Van de Kamp -- Amendment to Form 721 -- Schedule C-2

Reynolds Metals Company
common stock
aluminum production
acquired: 1-30-86
disposed: 6-30-87
value: \$10,001 to \$100,000

Aetna Life and Casualty Company
common stock
insurance
acquired: 11-13-85
disposed: 7-27-87
value: under \$10,000

Bank of Boston
preferred stock
banking
acquired: 11-13-86
disposed: 7-28-87
value: under \$10,000

Southwestern Bell Corporation
common stock
telephone company
acquired: 3-27-87
disposed: 8-28-87
value: under \$10,000

US West Incorporated
common stock
telephone company
acquired: 3-27-87
disposed: 8-28-87
value: under \$10,000

Southwestern Bell Corporation
common stock
telephone company
acquired: 3-27-87
disposed: 11-4-87
value: \$10,001 to \$100,000

John K. Van de Kamp -- Amendment to Form 721 -- Schedule C-2

Exxon Corporation
common stock
petroleum products
acquired: 4-24-87
disposed: 11-5-87
value: \$10,001 to \$100,000

Aetna Life and Casualty Company
common stock
insurance
acquired: 11-13-85
disposed: 11-12-87
value: under \$10,000

Allied Signal Incorporated
common stock
aerospace; automotive
acquired: 2-17-87
disposed: 11-12-87
value: \$10,001 to \$100,000

American Home Products Corporation
common stock
health care; food; household products
acquired: 3-27-86
disposed: 11-12-87
value: \$10,001 to \$100,000

K-Mart Corporation
common stock
retail merchandise
acquired: 5-13-85
disposed: 11-12-87
value: \$10,001 to \$100,000

Bank of New York
bond
banking
acquired: 11-4-86
disposed: 11-13-87
value: \$10,001 to \$100,000

Aetna Life and Casualty Company
common stock
insurance
acquired: 11-13-85
disposed: 12-14-87
value: \$10,001 to \$100,000

John K. Van de Kamp -- Amendment to Form 721 -- Schedule C-2

Allied Signal Incorporated
common stock
aerospace; automotive
acquired: 2-17-87
disposed: 12-14-87
value: \$10,001 to \$100,000

Atlantic Richfield Company
common stock
oil; gas; chemicals
acquired: 7-16-87
disposed: 12-14-87
value: under \$10,000

Bank of Boston
bond
banking
acquired: 11-13-86
disposed: 12-14-87
value: \$10,001 to \$100,000

Bank of New York
bond
banking
acquired: 11-4-86
disposed: 12-14-87
value: under \$10,000

Exxon Corporation
common stock
petroleum and petroleum products
acquired: 4-24-87
disposed: 12-14-87
value: \$10,001 to \$100,000

International Business Machines
common stock
business machines
acquired: 11-30-83
disposed: 12-14-87
value: \$10,001 to \$100,000

Union Carbide
bond
chemicals; gases; plastics; carbon products
acquired: 8-28-87
disposed: 12-14-87
value: under \$10,000

John K. Van de Kamp -- Amendment to Form 721 -- Schedule C-2

Union Carbide
bond
chemicals; gases; plastics; carbon products
acquired: 6-30-87
disposed: 12-14-87
value: \$10,001 to \$100,000

US West Incorporated
common stock
telephone company
acquired: 3-27-87
disposed: 12-14-87
value: \$10,001 to \$100,000

United Technologies Corporation
common stock
power; flight systems; industrial products; jet aircraft
acquired: 6-4-87
disposed: 12-14-87
value: \$10,001 to \$100,000

Westinghouse Electrical Corporation
common stock
electrical equipment and supplies
acquired: 6-30-87
disposed: 12-14-87
value: under \$10,000

Westinghouse Electrical Corporation
common stock
electrical equipment and supplies
acquired: 8-12-87
disposed: 12-14-87
value: under \$10,000

John K. Van de Kamp -- Amendment to Form 721 -- Schedule C-2

Cigna Corporation
preferred stock
health care; insurance; financial services
acquired: 12-14-87
value: \$10,001 to \$100,000

ITT Corporation
preferred stock
industrial products; defense technology; pulp; timber; insurance;
hotel management
acquired: 9-9-85
value: \$10,001 to \$100,000

Unisys
preferred stock
information systems
acquired: 3-17-87
value: \$10,001 to \$100,000

Dana Corporation
bond
vehicle products; industrial lines
acquired: 12-17-87
value: \$10,001 to \$100,000

HARRY J. VAN DE KAMP TRUST

The following is a listing of the assets of the Harry J. Van de Kamp trust as of December 31, 1987:

Listed securities

Alco-Standard
common stock
wholesales diverse products: drugs; paper; office supplies;
aerospace; food service equipment; health care equipment
acquired: 12-2-82
value: \$10,001 to \$100,000

American Home Products
common stock
health care; food; household products
acquired: 3-17-86
value: \$10,001 to \$100,000

Banc One Corporation
common stock
interstate bank holdings
acquired: 12-17-87
value: \$10,001 to \$100,000

K-Mart Corporation
common stock
retail merchandise
acquired: 5-13-85
value: \$10,001 to \$100,000

Loew's Corporation
common stock
insurance; tobacco; hotels; watches; equity in CBS
acquired: 11-13-86
value: \$10,001 to \$100,000

May Department Stores
common stock
retail merchandise
acquired: 9-9-85
value: \$10,001 to \$100,000

Xerox Corporation
common stock
business products system; financing; insurance; financial services
acquired: 12-14-87
value: \$10,001 to \$100,000

Unlisted securities

Lawry's Restaurants Incorporated
acquired: 6-30-77
value: over \$100,000

Van Frank Investments
acquired: 6-30-77
value: \$10,001 to \$100,000

Other assets

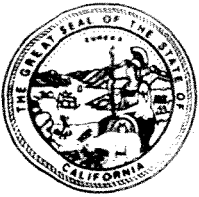
Cash; general money market fund
value: over \$100,000

\$200,000 promissory note dated June 17, 1987, executed by John K. and Andrea L. Van de Kamp, due July 1, 1992 (variable interest)
value: over \$100,000

\$103,800 promissory note dated November 15, 1980, executed by Lawry's Restaurants Incorporated, due August 31, 1989 (variable interest)
• value: over \$100,000

28.58% partnership interest in F P V Junior Partnership
value: over \$100,000

28.58% partnership interest in F P V Senior Partnership
value: over \$100,000



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").^{1/}

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?

^{1/} 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.)^{2/} 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.

^{2/} 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.^{3/}

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

^{3/} 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.^{4/} 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.^{5/} 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.

^{4/} 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.

^{5/} 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
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If you have any questions concerning this letter, please
contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel

Kathryn E. Donovan

By: Kathryn E. Donovan
Counsel, Legal Division

DMG:KED:ld:88169



California Fair Political Practices Commission

April 22, 1988

Honorable John K. Van de Kamp
State Attorney General
3580 Wilshire Blvd., Suite 800
Los Angeles, CA 90010

Attention: Ms. Esther Mott

Re: 1987 Annual Statement of
Economic Interests (Form 721)

Dear Attorney General Van de Kamp:

The Fair Political Practices Commission, as the filing officer for the statements of economic interests (Form 721) filed by California state and local officials, reviews the statements on their face to ensure that they comply with the disclosure requirements of the Political Reform Act of 1974.^{1/} After a routine review of your 1987 annual statement of economic interests, we have a question concerning the trusts which are described in "Attachment A" of your 1987 statement. On April 19, 1988, I spoke with Ms. Esther Mott of your office about this, and she requested that I write to you.

Attachment A of your Form 721 describes three trusts. The trusts described in paragraphs (1) and (2) appear to be irrevocable trusts in which you have a remainder interest. If the trusts are irrevocable and they hold any reportable investments in business entities or interests in real property,^{2/} the investments and interests in real property must be disclosed on Schedule C of the

^{1/} 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/} As you know, elected state officers are required to disclose as an "investment" any business entity in which the officer has an ownership interest of \$1,000 or more if the business entity is located in or doing business in California. Interests in real property must be disclosed if the official has an ownership interest of \$1,000 or more in real property located in California.

John Van de Kamp
April 22, 1988
Page Two

Form 721. (Sections 82033 and 82034; Regulation 18234, copy enclosed.) As discussed below, these trusts also may be "business entities" which you must report on Schedule A of the Form 721.

You have indicated that the trust described in paragraph (3) of your Appendix A is a revocable trust. Therefore, that trust is not reportable. (Regulation 18234(c)(2)(B).)

With regard to the Act's conflict of interest disclosure provisions, Sections 87200-87207 require elected state officers to disclose certain investments and interests in real property. Section 82034 provides that:

Investments of an individual includes a pro rata share of investments of any ... trust in which the individual or immediate family owns, directly, indirectly or beneficially, a 10 percent interest or greater.

(Emphasis added.)

Section 82033 provides that:

Interests in real property of an individual includes a pro rata share of interests in real property of any ... trust in which the individual or immediate family owns, directly, indirectly or beneficially, a 10 percent interest or greater.

(Emphasis added.)

With regard to the requirement to report the interests in real property and investments held by the trusts, Regulation 18234 defines when a filer has a "direct, indirect or beneficial" interest in the holdings of a trust. With regard to a filer who is a beneficiary of a trust, the regulation provides that the filer must report the holdings of the trust if he or she:

- (A) Presently receives income; or
- (B) Has an irrevocable future right to receive income or principal. For purposes of this subsection, an individual has an irrevocable future right to receive income or principal if the trust is irrevocable and:

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.

(Regulation 18234(c)(2).)

If the trusts you have described in Attachment A are irrevocable within the meaning of Regulation 18234, any reportable investments in business entities or real property must be disclosed on Schedule C. From the information provided, it appears that you have an irrevocable remainder interest in the trusts described in paragraphs (1) and (2) of Attachment A.

You have indicated that you are the beneficiary of a one-third remainder interest in the trust described in paragraph (1) of Attachment A. We have previously advised that a full remainder interest may be viewed as a one hundred percent interest in the trust.

Using this method of valuation, you would have a one-third interest in the trust. Accordingly, you would be required to disclose on Schedule C all investments in reportable business entities and interests in real property held by the trust which at any time during 1987 had a value of \$3,000 or more. Since you have a one-half remainder interest in the trust described in paragraph (2) of Attachment A, you would be required to disclose on Schedule C all investments in reportable business entities and interests in real property held by this trust which at any time during 1987 had a value of \$2,000 or more.

Please note also that "investment" is defined in Section 82034 as "any financial interest in or security issued by a business entity...." Section 82005 defines "business entity" as:

Any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association.

(Emphasis added.)

John Van de Kamp
April 22, 1988
Page Four

Therefore, if the trusts described in (1) and (2) of your Attachment A are business trusts, they must be reported as investments on Schedule A of your Form 721. However, we have previously advised that family trusts are not considered to be business trusts.

Enclosed are Form 721 Supplemental Schedules A and C. If you determine after reviewing this letter and your Form 721 filing that additional disclosure is appropriate, these forms may be used. They would be filed with the filing officer for the Department of Justice who will make and retain a copy and forward the original to the Commission.

If you have any questions about this letter, or about the requirement to report interests in trusts, please call me at (916) 322-5662 (ATSS, 492-5662).

Sincerely,

Jeanne Pritchard
Jeanne Pritchard *cu*
Division Chief
Technical Assistance and
Analysis Division

A-88-233

1515 K Street, Suite 600
P O Box 944255
Sacramento, California 94244 2550
(916) 324-5437

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JUN 23 9 40 AM '88

State of California

Office of the Attorney General

John K. Van de Kamp
Attorney General

June 16, 1988

California Fair Political Practices Commission
Diane M. Griffiths, General Counsel
Legal Division
428 "J" Street, Suite 800
P O Box 807
Sacramento, California 95804-0807

ATTENTION: KATHRYN E. DONOVAN, COUNSEL

Dear Ms. Donovan:

- Herewith I am filing an amended Schedule C-2, to be attached to my Form 721 Statement of Economic Interests for the calendar year 1987, which was filed February 22, 1988.

The amended filing is based upon your June 8, 1988, letter of advice which opines that I have an irrevocable right to receive principal or income from a trust established by my father, Harry Van de Kamp, upon his death in 1977.

You conclude on what I believe is a matter of first impression that the trust established in my father's will falls within the reporting requirements of Section 182234 of your regulations.

As I am sure you know, over the years, in an attachment to my Form 721, I have consistently disclosed my interest in this trust, as well as another which you opine does not require a filing.

In that attachment I have stated: "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. 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."

California Fair Political Practices Commission
Ms. Kathryn E. Donovan
June 16, 1988
Page Two

We reviewed your regulations earlier and had determined that whatever interest I possessed was so remote as to fall outside the coverage of your regulations. Nonetheless, out of an abundance of caution, we flagged the trust for you in our annual reports, should there be any question.

Several factors within the trust confirm my view that the trust is beyond the coverage of your regulations:

- (1) I do not have a right to income or principal during the life of my mother; she is still alive.
- (2) There is at least a possibility, given the invasion powers and the future vagaries of investment, that there might be nothing left in the trust upon the death of my mother, when I would be in a position to have a limited right to part of the principal.
- (3) Under Section 4.27 it is also clear that should I die before my mother, I have no interest in the trust -- to wit, no power to name a beneficiary to replace my position. In other words, I would not have the right to pass on my inchoate right to my wife or to a designated friend.
- (4) Should I be in a position to take my interest in the trust upon the death of my mother, I have no absolute right to any specific investment then in the trust. The trustee has discretion at that point to make a non-pro rata division of shares between trustees as long as the respective assets have equivalent or proportionate fair market value.
- (5) Section 4.3 of the trust stipulates that, "No interest in the income or principal of any trust established by this trust should 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."

When these factors are taken together, a strong case exists that your regulations do not require my reporting of the trust's assets.

Nonetheless, I learned long ago as a practical matter that full disclosure is the order of the day and one of the prices exacted when one is in public life.


I have therefore obtained from the trust's accountant a listing of what I believe to be the required information, and by this letter, am filing an amendment to Form 721 for the calendar year 1987.

California Fair Political Practices Commission
Kathryn E. Donovan
June 16, 1988
Page Three

At the same time, given the conditions of the trust as stated in this letter, I ask that you reconsider the opinion letter which you sent to me.

While I disagree with the conclusion of the letter of advice, I appreciate the manner in which this matter has been handled and the time and attention given to it. Should there be any further questions about this or any other matter within your jurisdiction with which I am involved, please do not hesitate to contact me.

Very truly yours,



JOHN K. VAN DE KAMP
Attorney General

hrd

Enclosure

JOHN K. VAN DE KAMP
AMENDMENT TO 1987 FORM 721 -- SCHEDULE C-2
INVESTMENTS HELD BY A BUSINESS ENTITY OR TRUST

Investments held by Harry J. Van de Kamp Trust

1987 Transactions

Pitney-Bowes
common stock
business machines
acquired: 8-20-86
disposed: 3-17-87
value: \$10,001 to \$100,000

Delmarva Power and Light
common stock
public utility
acquired: 11-13-85
disposed: 3-27-87
value: \$10,001 to \$100,000

USF&G Corporation
preferred stock
insurance
acquired: 7-31-86
disposed: 5-22-87
value: \$10,001 to \$100,000

Household International
preferred stock
finance; insurance; manufacturing
acquired: 9-9-85
disposed: 5-26-87
value: \$10,001 to \$100,000

Dayton-Hudson Corporation
common stock
retail merchandise
acquired: 2-7-86
disposed: 6-8-87
value: \$10,001 to \$100,000

May Department Stores
common stock
retail merchandise
acquired: 9-9-85
disposed: 6-8-87
value: \$10,001 to \$100,000

John K. Van de Kamp -- Amendment to Form 721 -- Schedule C-2

Reynolds Metals Company
common stock
aluminum production
acquired: 1-30-86
disposed: 6-8-87
value: \$10,001 to \$100,000

Southwestern Bell Corporation
common stock
telephone company
acquired: 11-13-86
disposed: 6-8-87
value: \$10,001 to \$100,000

Tyco Labs Incorporated
common stock
fire protection and safety; electronics; packaging
acquired: 1-31-86
disposed: 6-8-87
value: \$10,001 to \$100,000

US West Incorporated
common stock
telephone company
acquired: 3-27-87
disposed: 6-6-87
value: \$10,001 to \$100,000

McKesson Corporation
bond
drugs and health care; general merchandise; beverages
acquired: 6-10-81
disposed: 6-10-87
value: \$10,001 to \$100,000

Bank of New York
bond
banking
acquired: 11-4-86
disposed: 6-30-87
value: \$10,001 to \$100,000

John K. Van de Kamp -- Amendment to Form 721 -- Schedule C-2

Reynolds Metals Company
common stock
aluminum production
acquired: 1-30-86
disposed: 6-30-87
value: \$10,001 to \$100,000

Aetna Life and Casualty Company
common stock
insurance
acquired: 11-13-85
disposed: 7-27-87
value: under \$10,000

Bank of Boston
preferred stock
banking
acquired: 11-13-86
disposed: 7-28-87
value: under \$10,000

Southwestern Bell Corporation
common stock
telephone company
acquired: 3-27-87
disposed: 8-28-87
value: under \$10,000

US West Incorporated
common stock
telephone company
acquired: 3-27-87
disposed: 8-28-87
value: under \$10,000

Southwestern Bell Corporation
common stock
telephone company
acquired: 3-27-87
disposed: 11-4-87
value: \$10,001 to \$100,000

John K. Van de Kamp -- Amendment to Form 721 -- Schedule C-2

Exxon Corporation
common stock
petroleum products
acquired: 4-24-87
disposed: 11-5-87
value: \$10,001 to \$100,000

Aetna Life and Casualty Company
common stock
insurance
acquired: 11-13-85
disposed: 11-12-87
value: under \$10,000

Allied Signal Incorporated
common stock
aerospace; automotive
acquired: 2-17-87
disposed: 11-12-87
value: \$10,001 to \$100,000

American Home Products Corporation
common stock
health care; food; household products
acquired: 3-27-86
disposed: 11-12-87
value: \$10,001 to \$100,000

K-Mart Corporation
common stock
retail merchandise
acquired: 5-13-85
disposed: 11-12-87
value: \$10,001 to \$100,000

Bank of New York
bond
banking
acquired: 11-4-86
disposed: 11-13-87
value: \$10,001 to \$100,000

Aetna Life and Casualty Company
common stock
insurance
acquired: 11-13-85
disposed: 12-14-87
value: \$10,001 to \$100,000

John K. Van de Kamp -- Amendment to Form 721 -- Schedule C-2

Allied Signal Incorporated
common stock
aerospace; automotive
acquired: 2-17-87
disposed: 12-14-87
value: \$10,001 to \$100,000

Atlantic Richfield Company
common stock
oil; gas; chemicals
acquired: 7-16-87
disposed: 12-14-87
value: under \$10,000

Bank of Boston
bond
banking
acquired: 11-13-86
disposed: 12-14-87
value: \$10,001 to \$100,000

Bank of New York
bond
banking
acquired: 11-4-86
disposed: 12-14-87
value: under \$10,000

Exxon Corporation
common stock
petroleum and petroleum products
acquired: 4-24-87
disposed: 12-14-87
value: \$10,001 to \$100,000

International Business Machines
common stock
business machines
acquired: 11-30-83
disposed: 12-14-87
value: \$10,001 to \$100,000

Union Carbide
bond
chemicals; gases; plastics; carbon products
acquired: 8-28-87
disposed: 12-14-87
value: under \$10,000

John K. Van de Kamp -- Amendment to Form 721 -- Schedule C-2

Union Carbide
bond
chemicals; gases; plastics; carbon products
acquired: 6-30-87
disposed: 12-14-87
value: \$10,001 to \$100,000

US West Incorporated
common stock
telephone company
acquired: 3-27-87
disposed: 12-14-87
value: \$10,001 to \$100,000

United Technologies Corporation
common stock
power; flight systems; industrial products; jet aircraft
acquired: 6-4-87
disposed: 12-14-87
value: \$10,001 to \$100,000

Westinghouse Electrical Corporation
common stock
electrical equipment and supplies
acquired: 6-30-87
disposed: 12-14-87
value: under \$10,000

Westinghouse Electrical Corporation
common stock
electrical equipment and supplies
acquired: 8-12-87
disposed: 12-14-87
value: under \$10,000

John K. Van de Kamp -- Amendment to Form 721 -- Schedule C-2

Cigna Corporation
preferred stock
health care; insurance; financial services
acquired: 12-14-87
value: \$10,001 to \$100,000

ITT Corporation
preferred stock
industrial products; defense technology; pulp; timber; insurance;
hotel management
acquired: 9-9-85
value: \$10,001 to \$100,000

Unisys
preferred stock
information systems
acquired: 3-17-87
value: \$10,001 to \$100,000

Dana Corporation
bond
vehicle products; industrial lines
acquired: 12-17-87
value: \$10,001 to \$100,000

HARRY J. VAN DE KAMP TRUST

The following is a listing of the assets of the Harry J. Van de Kamp trust as of December 31, 1987:

Listed securities

Alco-Standard
common stock
wholesales diverse products: drugs; paper; office supplies;
aerospace; food service equipment; health care equipment
acquired: 12-2-82
value: \$10,001 to \$100,000

American Home Products
common stock
health care; food; household products
acquired: 3-17-86
value: \$10,001 to \$100,000

Banc One Corporation
common stock
interstate bank holdings
acquired: 12-17-87
value: \$10,001 to \$100,000

K-Mart Corporation
common stock
retail merchandise
acquired: 5-13-85
value: \$10,001 to \$100,000

Loew's Corporation
common stock
insurance; tobacco; hotels; watches; equity in CBS
acquired: 11-13-86
value: \$10,001 to \$100,000

May Department Stores
common stock
retail merchandise
acquired: 9-9-85
value: \$10,001 to \$100,000

Xerox Corporation
common stock
business products system; financing; insurance; financial services
acquired: 12-14-87
value: \$10,001 to \$100,000

Unlisted securities

Lawry's Restaurants Incorporated
acquired: 6-30-77
value: over \$100,000

Van Frank Investments
acquired: 6-30-77
value: \$10,001 to \$100,000

Other assets

Cash; general money market fund
value: over \$100,000

\$200,000 promissory note dated June 17, 1987, executed by John K. and Andrea L. Van de Kamp, due July 1, 1992 (variable interest)
value: over \$100,000

\$103,800 promissory note dated November 15, 1980, executed by Lawry's Restaurants Incorporated, due August 31, 1989 (variable interest)
value: over \$100,000

28.58% partnership interest in F P V Junior Partnership
value: over \$100,000

28.58% partnership interest in F P V Senior Partnership
value: over \$100,000