



FAIR POLITICAL PRACTICES COMMISSION

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May 11, 2007

Honorable James LaPorte
Kings County Superior Court
1426 South Drive
Hanford, California 93230

**RE: Your Request for Advice
Our File No. A-07-074**

Dear Judge LaPorte:

This letter is in response to your request for advice regarding the statement of economic interest disclosure provisions of the Political Reform Act (the "Act").¹ Our advice is based on the facts presented in your request and related enclosures. The Fair Political Practices Commission does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71; Section 83114.)

QUESTION

As a public official subject to the reporting provisions of the Act, must you report on your Statement of Economic Interests your wife's interest in her mother's trusts as a co-trustee and as a contingent beneficiary?

CONCLUSION

No, you are not required to report your wife's interest in her mother's trusts because under Regulation 18234 you do not have an economic interest in the trusts' assets. For purposes of Regulation 18234 a person does not have an interest in a trust solely because he or she is trustee or co-trustee. Under this regulation a beneficiary who does not presently receive income is considered not to have an interest in a trust if powers exist to consume or invade the principal of the trust for the benefit of a beneficiary other than the official. In this case, your wife receives no income from the trust and the trustees may consume and invade principal for the benefit of your mother-in-law.

¹ Government Code sections 81000-91014. Commission regulations appear at title 2, sections 18109-18997, of the California Code of Regulations.

FACTS

You are a superior court judge with a duty under the Act to file Statements of Economic Interests. Your wife has an interest in two testamentary trusts (collectively, the "Trusts") of which she is a co-trustee, along with her mother, Mary I. Weiss. The trusts were created by Karl C. Weiss and Mary I. Weiss by Declaration of Trust on February 3, 1992. Upon Mr. Weiss's death in 2000, the trust was split into two trusts, the Karl C. Weiss Bypass Trust (the "Bypass Trust") and the Mary I. Weiss Survivors Trust (the "Survivor's Trust"). Upon the death of Mrs. Weiss, the Trusts are to be combined and the proceeds divided so that a specified dollar amount is set aside in trust for grandchildren and the remainder is to be distributed outright to the then living children of Mrs. Weiss. Accordingly, your wife has a remainder interest in the Trusts contingent upon surviving her mother.

Under the terms of the Trusts, your wife receives no income and has no right to income or principal during her mother's lifetime. The trustees are to distribute all income from the Trusts to Mrs. Weiss during her lifetime. If income from the Trusts is "insufficient" to provide for the "proper health, education, support, and maintenance (consistent with the standard of living maintained at the time of the first deceased Trustor's death)," the trustees, in their discretion, may use principal from the Survivor's Trust for this purpose. Once the Survivor's Trust has been exhausted, the trustees have discretion to pay such costs from principal of the Bypass Trust.

ANALYSIS

A public official who files Statements of Economic Interests is required to disclose reportable investments, business positions, interests in real property and income which may foreseeably be affected materially by any decision made or participated in by that public official by virtue of the official's position. (Section 87302.)

Under the Act, reportable investments and interests in real property include indirect investments and interests, including those owned by the spouse or dependent child of the public official, or by a trust in which the official, the official's spouse or dependent child own a 10% interest or greater. (Section 87103.) Therefore, unless otherwise exempted from disclosure, investments or interests in real property held by a trust in which your wife has a beneficial interest of 10% or more are your indirect investments and interests in real property.

Regulation 18234 provides, in part, that an official has an interest in real property and investments held by a trust if the official is a beneficiary of the trust and

“(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, unless one of the following applies:

“(i) Powers exist to consume, invade, or appoint the principal for the benefit of beneficiaries other than the official and such powers are not limited by an ascertainable standard relating to the health, education, support, or maintenance of the beneficiaries; or

“(ii) Under the terms of the trust, someone other than the official can designate the persons who shall possess or enjoy the trust property or income.” (Regulation 18234(c)(2)(B).)

According to the information you have provided, the principal of the Trusts can be invaded for the benefit of your mother-in-law, who is a beneficiary “other than the filer.” However, under subdivision (c)(2)(B)(i), even if there is a power to invade principal, the official still has a reportable interest if the power to invade is limited by an “ascertainable standard relating to the health, education, support or maintenance of said beneficiaries.”

Here, under the terms of the Declaration of Trust, the power to invade principal is limited to health, education, support and maintenance needs, as deemed necessary in the trustee’s discretion. We have previously advised that a power to invade principal “as necessary for the proper support, care and maintenance of the decedent’s wife and sister” did not limit the trustee’s discretion to an ascertainable standard. (*Van de Kamp* Advice Letter, No. A-88-169.) The limitations imposed on the trusts in question seem similar to those set forth in the *Van de Kamp* letter. It does not appear that the “necessary” limitation would qualify as an “ascertainable standard.” Therefore, we conclude that the provisions of the Trusts relating to the power to invade trust principal fall within the exemption set forth in Regulation 18234(c)(2)(B)(i) and that your wife’s interest in the Trusts need not be reported.

Section 18234 further provides that an official does not have a direct, indirect, or beneficial interest in a trust solely because the official is a trustee or co-trustee. Accordingly, your wife’s status as a co-trustee does not give rise to an interest in the Trusts.

For the reasons stated above, under the current circumstances, you need not disclose any interests in the Trusts on your Statement of Economic Interests.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Scott Hallabrin
General Counsel

A handwritten signature in cursive script, appearing to read "Valentina Joyce".

By: Valentina Joyce
Counsel, Legal Division

VJ:jgl

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