

# Memorandum

To : Honorable Ernest J. Dronenburg, Jr.

Date : July 2, 1990

From : E. L. Sorensen, Jr.  
Chief Counsel

Subject: Senate Bill 1738/Senate Bill 438 90-1

Mr. Earl J. Cantos, Jr. of your staff has raised several questions regarding the provisions of Senate Bill 1738 (Ch. Stats. 1990) and its potential successor Senate Bill 438. These questions, and our answers to each, follow.

### Question No. 1

Does the "preceding 12 months" provision found in both SB 1738 and 438 include the 12 month period prior to the effective date of the legislation (i.e., January 1, 1990 through December 31, 1990) or is it limited to the months commencing with the January 1, 1991 effective date of both of these bills?

### Answer

As you are aware, both SB 1738 and SB 438 restrict participation by a Board Member in the decision making process if the Board Member has "received a contribution or contributions in an aggregate amount of two hundred and fifty dollars (\$250) or more within the preceding 12 months ..."

Such a time requirement which is contained within a statute has historically been treated differently by the courts than the effective date of a given piece of legislation. Although there is a general rule of construction that a statute will not be construed to be retroactive unless the intention to make it so appears from the Act itself, the same rule does not apply to requirements contained within the language of the statute. It is well settled that a statute is not considered retroactive merely because some of the facts or conditions upon which its application depends came into existence prior to its enactment (United States v. Jacobs (1938) 83 L.Ed. 763), or because it draws on facts antecedent to its enactment for its operation. (Burks v. Poppy Construction Company (1962) 57 Cal.2d 463.) Examples of the application of this principle in particular situations may be found in the following California

cases: Eichelberger v. City of Berkeley, 46 Cal.2d 182, 189 (increase in pension); and Gregory v. State of California, 32 Cal.2d 700, 702 (interest recovered on refund of gift tax due to passage of statute allowing interest). We note that a similar approach was utilized with respect to the Political Reform Act (PRA) (Gov. Code §§ 81000 et seq.), which was added by initiative adopted June 4, 1974 and became effective January 7, 1975. The PRA contained similar provisions which required state officers and employees to report contributions or investments which had occurred during the previous 12 months within 30 days of the effective date of the act (See generally Gov. Code § 87200) even though the 12 months were prior to the effective date of the Act.

For the reasons explained above, we have concluded that, notwithstanding the effective date of the legislation, the reporting requirements of SB 1738 and SB 438 include the 12 month period prior to January 1, 1991. Thus, the provisions of both these bills will not be considered to have a retroactive effect merely because the reporting period specified is the "preceding 12 months" prior to the effective date of the statute. The disclosure and disqualification provisions of the Act will not be effective until January 1, 1991 and Board Members will not be required to report and comply with these provisions until that date.

#### Question No. 2

What are the Board Members' responsibilities with regard to contribution disclosure and disqualification requirements from state assessees under Senate Bills 1738 and 438?

#### Answer

Senate Bill 1738 is applicable to adjudicatory proceedings before the Board. "Adjudicatory proceeding" is defined as a "matter for adjudication that has been scheduled and appears as an item on a meeting notice of the board as required by Section 11125 as a contested matter for administrative hearing before the board members." As such, the provisions of SB 1738 would not apply to a Board meeting in which the Board Members met to set values for state assessees but would apply if the state assessee was petitioning to lower the value.

Under the provisions of Senate Bill 438, the term "adjudicatory proceeding" is specifically defined in paragraph (h)(5) as "any assessment pursuant to Section 19 of Article XIII of the California Constitution and any matter for adjudication that has been scheduled and appears as an item on a meeting notice ... as a contested matter." Thus, under the provisions of

SB 438, the disclosure and disqualification requirements would apply even when the members meet to set values of the state assesses.

Question No. 3

When must a contribution be returned in order to prevent disqualification under Senate Bills 1738 and 438?

Answer

The language in both bills with regard to when a contribution must be returned is substantially similar. Both bills contain similar requirements which provide for return of a contribution within 30 days of its receipt and knowledge of a pending hearing. It appears that the 30 day requirement does not begin under either bill until a Board Member knows about both the contribution and that a hearing is pending.

Senate Bill 1738 provides that: "if a member receives a contribution which would otherwise require disqualification under subdivision (c), and he or she returns the contribution within 30 days from the time he or she knows, or has reason to know, about the contribution and the adjudicatory proceeding pending before the board, his or her participation in the proceeding shall be deemed lawful."

Senate Bill 438 provides that: "[I]f a member receives a contribution which would otherwise require disqualification and he or she returns the contribution within 30 days from the time he or she knows, or should have known, about the contribution and the adjudicatory proceeding pending before the board, his or her participation in the proceeding shall be deemed lawful."

Question No. 4

Senate Bill 438 contains a provision under which the Board may require participants to certify under penalty of perjury on a "Notice of Contribution" whether or not a contribution has been made during the preceding 12 months. Can participants also be required to sign a similar certification under penalty of perjury under Senate Bill 1738?

Answer

No, in order to impose a requirement that a certification be made under penalty of perjury, there must be an underlying statutory authority to impose such a charge. (People v. Millsap, 85 Cal.App. 732 (1927).) Senate Bill 1738 does not

provide any statutory authority for requiring that the Notice of Contribution be signed under penalty of perjury.

We trust the above answers the questions you might have regarding Senate Bills 1738 and 438. If you have further questions concerning this matter, we will be happy to discuss them with you.

ELS:wak  
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