

Memorandum

To : Ms. Janice Masterton
Assistant to Executive Director

Date : October 29, 1990

From : Mary C. Armstrong
Legal

Subject : Senate Bill 1738, Chapter 84, Statutes of 1990 90-2

Your memorandum of October 24, 1990 to Chief Counsel E. L. Sorensen, Jr. has been referred to me for response. You have raised several questions regarding implementation of Senate Bill 1738. Your questions and our answers follow:

1. Are limited partnerships required to disclose contributions?

A limited partnership would be required to disclose its interest if a person acting as an "agent" in the adjudicatory proceeding is an employee of the limited partnership. Government Code section 15626(h)(4) provides that: "If a person acting as an agent is also acting as an employee or member of a law, accounting, consulting, or other firm, or a similar entity or corporation, both the entity or corporation and the person are agents." (Emphasis added.) Senate Bill 1738 does not require individual limited partners to disclose a contribution, if the limited partnership is a party to, or participant in, an adjudicatory proceeding pending before the Board.

2. Is the Department of Business Taxes or its representative required to file a disclosure statement?

Senate Bill 1738 defines the term "party" as "any person who is the subject of an adjudicatory proceeding pending before the board." The term "person" is not defined, however, the term is generally considered to mean a human being. By statute, the term "person" may also include a firm, labor organization, partnership, associations, corporations, etc. Whenever an enabling statute confers upon an entity the right to sue or be sued, the right to contract, etc., the courts have generally found that entity to be considered a "person." The Department of Business Taxes, as a department within a state agency, would not be considered a "person" and, therefore, would not be required to file a disclosure statement, nor would the Department of Business Taxes be considered a "participant" as that term is defined

because the Department of Business Taxes does not have a financial interest in the outcome of the proceeding.

A representative of the Department of Business Taxes would not be considered to be an "agent" within the definition found in Senate Bill 1738. The term "agent" is defined as "any person who represents a party to or participant in an adjudicatory proceeding." Since, as noted above, the Department of Business Taxes is neither a party in or a participant within the definitions given in Senate Bill 1738, its representative is not an agent.

3. Is the Franchise Tax Board or its representative required to file a disclosure statement?

Our analysis for the Franchise Tax Board (FTB) would be different than that of the Department of Business Taxes. The FTB would be considered a "person" and thus a party. Additionally, an FTB representative would be considered an agent. Thus, under Senate Bill 1738, both the Franchise Tax Board and its representative would be required to file a disclosure statement.

4. Are parties to hearings on applications for review, equalization and adjustment of local assessments required to file disclosure statements?

Generally, the parties to such adjudicatory proceedings are municipal or public utility districts, organized pursuant to sections 11531 and 15701 of the Public Utilities Code, and counties. We are of the opinion that a utility district would be considered a "person" since, like a corporation, it has the power to sue and be sued, contract, etc. (see generally Public Utilities Code §§ 12702, 12721). As such, a utility district would be considered a party within the meaning of Senate Bill 1738 and would be required to disclose any contributions made. We are also of the opinion that a county would be considered a "person" and would be subject to the same requirements.

5. Will a Member be precluded from voting if an aggregate amount over \$250 has been received from an agent, agents, or the entity itself?

Under the definition of the term "agent" found in Senate Bill 1738, "if a person acting as an agent is also acting as an employee or member of a law, accounting, consulting or other firm or similar entity or corporation, both the entity or corporation and the person are agents." Senate Bill 1738 provides that disclosure must be made if a contribution of \$250 or more has been made from an agent. We are therefore of the opinion that an

aggregate contribution of \$250 or more from a representative and his or her firm would be required to be disclosed. We note, however, that there is no requirement that contributions from other members of the firm would be used to determine the aggregate amount of the contribution provided the other members do not represent the party.

6. What happens when contributors change their status through name change or corporate dissolution?

A name change would not alter the disclosure requirement. A corporate dissolution is considered the end of that corporate entity. (Corp. Code § 1808.) As such, the new corporation would not be required to report contributions made by a former corporation.

7. May a Member ask to have a matter postponed if he received contributions in excess of \$250?

A Member could ask to have the matter postponed. Whether or not this occurred would be subject to the majority vote of the Board Members.

8. Can the Board, by regulation, require that Members file on a more frequent basis?

Senate Bill 1738 does not contain any statutory authority which supports a regulation requiring more frequent reporting of contributions than the reporting requirements set forth in Government Code sections 84200 et seq.

If you have further questions regarding this matter, we will be happy to discuss them with you.

MCA:wk
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cc: Ms. Cindy Rambo
Mr. E. L. Sorensen, Jr.
Ms. Michele Dahilig
Mr. Burt Oliver