

Memorandum

: Mrs. Janice Masterton

Date : September 24, 1991

From : Mary C. Armstrong

Subject : CONTRIBUTION DISCLOSURE OPINION 91-26
PARTICIPATION BY DISQUALIFIED BOARD MEMBER(S)

You have raised the following question:

If the Board is exercising its constitutional duty (such as a state assessee hearing) and two Board Members are disqualified from participation pursuant to Government Code Section 15626, what procedure should be followed to reach a quorum?

If the agenda item in question is a constitutional matter in which the Deputy State Controller is not permitted to participate because of Section 7.9 of the Government Code, then the Deputy Controller cannot be counted for purposes of a quorum. In order to have a quorum, three of the remaining Board Members must be present and participating.

If a Board Member or the State Controller is not participating pursuant to Section 15626 or for any other reason, his or her presence can be counted for purposes of a quorum even though he or she will not participate during the hearing or vote on the matter. If a Board Member is required to vote under such circumstances, Section 15626(i)(5) provides a mechanism for the legal participation of that Board Member.

Section 15626(i)(5) provides, in pertinent part:

"This section shall not prevent any member of the board from making, or participating in making, a governmental decision to the extent that the member's participation is legally required for the action or decision to be made
...."

Section 15626(i)(5) is essentially the same as Section 87101 of the Fair Political Practices Act (Gov. Code § 87101).

NOTE: Page 1, fourth paragraph, superseded by CDO 93-11

In interpreting Section 87101, the Fair Political Practices Commission has determined the following procedure to be followed in order to establish a quorum:

"If a board cannot as a result of board member disqualification, obtain a quorum in order to make decisions it is legally required to make, the board may bring back as many disqualified members as is necessary to establish a quorum. The preferred means of selecting which disqualified member should participate is by lot or other means or random selection. However, nothing in the Act prevents the use of other impartial and equitable means of selection." (4 FPPC Decisions 13 (No. 77-007 Feb. 7, 1978).) (Emphasis added.)

We are of the opinion that the procedure established in the case of Section 87101 disqualifications should be followed in cases of Section 15626 disqualifications. Once it is determined which Board Member(s) may legally participate, the Board Member may participate fully in all aspects of the hearing including voting on the matter.

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



MCA:wk
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cc: Honorable Brad Sherman
Honorable Ernest J. Dronenburg, Jr.
Honorable William Bennett
Honorable Matthew K. Fong
Honorable Gray Davis
Mr. Burton W. Oliver
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