

Memorandum

To : Mr. Steven Kamp

Date : March 12, 1991

From : Mary C. Armstrong
Senior Staff Counsel

Subject: Contribution Disclosure Memorandum 91-4
Non-Appearance Agenda Items

In your telephone conversations of March 11 and 12, 1991, with Chief Counsel E. L. Sorensen, Jr., you raised the following questions relating to non-appearance matters:

QUESTIONS

1. Whether an item appearing on the non-appearance agenda (refund schedule) is an adjudicatory proceeding requiring contribution disclosure and/or disqualification.
2. Whether a contribution from a member of a law firm who has not represented the taxpayer in the matter pending before the Board requires contribution disclosure and/or disqualification, even though the law firm itself and another member of the firm are listed as agents of a party.

ANSWERS

1. If an item is listed on a non-appearance agenda, such as a refund schedule, the disclosure/disqualification requirements of Government Code section 15626(b) and 15626(c) do not apply. Section 15626(h)(5) defines the term "adjudicatory proceeding" as:

"Adjudicatory proceeding pending before the board" means 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. A consent [non-appearance] calendar matter is not included unless the matter has previously appeared on the calendar as a nonconsent item, or has been removed from the

consent calendar for separate discussion and vote, or the item is one about which the member has previously contacted the staff or a party."

The item you have questioned has not previously appeared on the calendar as a non-consent item and has not been removed from the calendar for separate discussion and vote. We understand that the item is also not one about which the member has previously contacted the staff or a party. We are, therefore, of the opinion that the disclosure/disqualification requirements found in sections 15626(b) and 15626(c) do not apply. (Note: We are also of the opinion that raising a question regarding the disclosure/disqualification provisions regarding a particular item on a non-appearance matter does not constitute removal of the item for separate discussion and vote.)

2. We are of the opinion that a contribution by an unrelated member of a law firm will not result in the application of the disclosure/disqualification of section 15626, provided the contributor has not represented a party or participant in the pending adjudicatory proceeding. Section 15626(h)(4) only requires disclosure from "any person who represents a party to or participant in an adjudicatory proceeding pending before the board...[and the] law, accounting, consulting, or other firm, or a similar entity or corporation" which employs the agent, and does not require disclosure from all members of the firm.

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



MCA:wk
2862C

cc: Honorable Ernest J. Dronenburg, Jr.
Honorable William Bennett
Honorable Brad Sherman
Member, 4th District
Honorable Gray Davis
Ms. Cindy Rambo
Ms. Janice Masterton
Mr. E. L. Sorensen, Jr.
Mr. Robert J. Brenner
Mr. Richard H. Ochsner
Mr. John Abbott