

Memorandum

To : Mrs. Janice Masterton

Date : March 13, 1991

From : Mary C. Armstrong

Subject : Contribution Disclosure Opinion 91-5

In our meeting of March 12, 1991, you raised the following question:

Question

If three or more Board Members and/or the State Controller have received contributions of \$250 or more from a party in a pending adjudicatory proceeding, may the remaining Board Member(s) act on the matter?

Answer

In order for the Board to have a quorum, three Members must be present and participating. In order to act on a matter, at least two Board Members must vote. Under the facts presented, if three or more Board Members and/or the State Controller are prohibited from participation because of the disqualification requirements of section 15626, what is the mechanism for allowing at least two of the disqualified Board Members to act in order to meet the quorum requirements and/or to allow at least one Board Member to vote or act on a matter. 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 Government Code section 87101 found in the Fair Political Practices Act. 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 same procedure followed in the case of section 87101 disqualifications should be followed in cases of section 15626 disqualifications.

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

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