

## Memorandum

To : Mr. Robert J. Brenner  
Assistant Chief Counsel

Date: July 28, 1992

From : Mary C. Armstrong

Subject: CONTRIBUTION DISCLOSURE OPINION 92-10  
APPEAL OF TRICO BANCSHARES - PETITION FOR REHEARING  
NON-APPEARANCE AGENDA ITEM JULY 30, 1992

This is in response to your memorandum of July 24, 1992 in which you requested our opinion regarding the referenced non-appearance agenda item.

### QUESTIONS PRESENTED:

1. Can this matter be discussed at the Board hearing on Thursday, July 30, 1992, even though it has been noticed as a non-appearance matter, or must it be put over for discussion at a meeting where it is noticed as an adjudicatory matter?

2. Should an attorney, who is not listed as a representative of record in this appeal; but who has written to Board Members urging the granting of the Petition for Rehearing; has solicited letters in support of the Petition for Rehearing; and has made telephone contact with a supervising counsel in the Franchise and Income Tax Appeals Section representing that he was calling the staff on behalf of Board Members' offices; be required to complete a contribution disclosure prior to any discussion by the Board?

### OPINION:

For the reasons set forth below, the referenced matter will be considered an adjudicatory proceeding if there is a separate discussion and vote. There is no requirement that the

item be noticed as an adjudicatory proceeding. All agents and participants who have discussed this matter with either Board Members or Board staff will be required to complete contribution disclosure forms prior to the hearing.

**ANALYSIS:**

Government Code section 15626 defines the term "adjudicatory proceeding pending before the board" 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. A consent 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." We have previously opined that a Request or Petition for Rehearing, which is listed on a "non-appearance" agenda, is not an adjudicatory proceeding within the meaning of section 15626 (see Contribution Disclosure Opinion 92-3). This is true whether or not the original hearing was an adjudicatory proceeding because the Petition for Rehearing is, in our opinion, an entirely new matter before the Board. It is irrelevant whether or not the matter is noticed as an "appearance" or "non-appearance" item before the Board. The key is whether the matter is made a subject of a separate discussion and vote. At that time, the matter becomes adjudicatory within the meaning of Government Code section 15626 and the Board Members may not participate if a qualifying contribution has been received.

As to the second question, if an attorney is engaging in the activity you describe, he would be considered an "agent" because presumably some client is paying him for his services. He would not be considered a participant unless he had a financial interest in the outcome of the hearing. Government Code section 15626 (h) (3) defines the term "participant" as "any person who is not a party but who actively supports or opposes a particular decision in an adjudicatory proceeding pending before the board and who has a financial interest in the decision..." An "agent" is defined in section 15626(h) (4) as "any person who represents a party to or participant in an adjudicatory proceeding pending before the board..."

Mr. Robert J. Brenner

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July 28, 1992

We trust this answers the questions raised in your memorandum. If you have further questions concerning this matter, we will be happy to discuss them with you.

*Mary Cameron*

cc: Ms. Janice Masterton  
Ms. Martha Wilson  
Mr. Donald Buxton

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